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WHO: The Office of the Federal Register.

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Contents

Federal Register
Vol. 54, No. 76
Friday, April 21, 1989

Agency for International Development
RULES
Acquisition regulations:
Miscellaneous amendments, 16122

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 16097

Agriculture Department
See also Agricultural Marketing Service; Foreign Agricultural Service; Rural Electrification Administration
RULES
Organization, functions, and authority delegations:
Officers; order of succession, 16097

Army Department
NOTICES
Environmental statements; availability, etc.:
Camp Grayling Army National Guard Training Site, MI; mission expansion multiple construction, 16156

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Census Bureau
NOTICES
Meetings:
Agriculture Statistics Advisory Committee, 16144

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Illinois, 16143
Louisiana, 16144

Coast Guard
RULES
Drawbridge operations:
Louisiana, 16106
Ports and waterways safety:
Old River Control Structure, Mississippi River; safety zone, 16107
Regattas and marine parades:
National Sweepstakes Regatta, Redbank, NJ, 16106
PROPOSED RULES
Tank vessels, etc:
Lifesaving equipment, 16198

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

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1989:
Additions and deletions, 16147, 16148
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
India; correction, 16194
Indonesia, 16146
Turkey, 16146
United Arab Emirates, 16147

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 16192

Copyright Royalty Tribunal
NOTICES
Cable royalty fees:
Distribution proceedings, 16148

Customs Service
PROPOSED RULES
Fines, penalties, and forfeitures:
Anti-Drug Abuse Act; implementation—
Seizure of property for possession of controlled substances; correction, 16195
NOTICES
Customs bond cancellation standards; liquidated damages claims; guidelines for cancellation, 16182

Defense Department
See also Army Department; Navy Department
RULES
Acquisition regulations:
Miscellaneous amendments, 16111
Federal Acquisition Regulation (FAR):
Prompt pay, and architect-engineer definition Correction, 16194
NOTICES
Meetings:
DIA Advisory Board; cancellation, 16155
Government-Industry Relations Defense Advisory Panel, 16155
Science Board task forces; date change, 16155
Uncompensated Overtime Advisory Committee, 16155

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Carfentanil, 16130
NOTICES
Applications, hearings, determinations, etc.:
Husain, Maimoona Hakim, M.D., 16173
Penick Corp., 16174

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 16175

Energy Department
NOTICES
Environmental statements; availability, etc.:
Waste isolation pilot plant, Carlsbad, NM, 16350
Natural gas exportation and importation:
Brymore Energy Inc., 16157
Great Lakes Gas Transmission Co., 16158
ICG Utilities (Ontario) Ltd., 16159
Texas International Gas & Oil Co., 16160

Environmental Protection Agency
PROPOSED RULES
Superfund program:
Toxic chemical release reporting; community right-to-know, 16138
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 16161
Weekly receipts, 16162
Water pollution control:
Clean Water Act—
Class I and II administrative penalty assessments, 16162
(2 documents)

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Domestic crude oil export study; hearings, 16144

Federal Aviation Administration
RULES
Airworthiness directives:
Piper, 16098
Standard instrument approach procedures, 16104
Transition areas, 16101–16103
(4 documents)
PROPOSED RULES
Airworthiness directives:
Cessna, 16127
NOTICES
Environmental statements; availability, etc.:
Dallas-Fort Worth International Airport, TX, 16180
Exemption petitions; summary and disposition, 16181

Federal Communications Commission
RULES
Common carrier services:
Jurisdictional separations procedures—
Link-Up America program, 16110
NOTICES
Meetings:
Advanced Television Service Advisory Committee, 16163

Federal Emergency Management Agency
RULES
Disaster assistance:
Great Lakes planning assistance program, 16108

Federal Maritime Commission
NOTICES
Agreements filed, etc., 16163

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 16192
(2 documents)

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 16192
Applications, hearings, determinations, etc.:
Braun, Marvin, et al., 16163
Central Bancorporation, Inc., et al., 16164
First Peoples Financial Corp. et al., 16165
FNB, Inc., et al., 16164

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
American Fidelity Insurance Co., 16188
Camden Fire Insurance Association, 16188
Cigna Insurance Co., 16188

Food and Drug Administration
PROPOSED RULES
Food for human consumption; animal drugs, feeds, and related products:
Poisonous or deleterious substances in food; action levels, 16128
NOTICES
Human drugs:
Orphan drug products—
Designations; cumulative listing, 16294

Foreign Agricultural Service
NOTICES
Sunflowerseed and cottonseed oil assistance programs, 16143

Foreign Assets Control Office
NOTICES
Cuban assets control:
Service transactions related to Cuban travel or family remittances forwarded to Cuban nationals, etc., 16188

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Prompt pay, and architect-engineer definition Correction, 16194
Federal property management:
Federal travel—
Federal and State tax tables; 1989 relocation income tax allowance payments calculation; correction, 16194

Health and Human Services Department
See Food and Drug Administration; Public Health Service; Social Security Administration

Health Resources and Services Administration
See Public Health Service

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
3.5" microdisks and coated media from Japan; correction, 16194

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 16171
Railroad operation, acquisition, construction, etc.:
Intermountain Western Railroad Co., 16171
Railroad services abandonment:
Canadian Pacific, Ltd., 16171

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Hardage, Royal N., et al., 16171
Iron Springs Sanitary District et al., 16172
Pahokee, FL, 16172
USX Corp., 16173

Labor Department
See Employment Standards Administration; Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Management framework plans, etc.:
Oklahoma, 16167
Opening of public lands:
Arizona; correction, 16194
Realty actions; sales, leases, etc.:
Arizona, 16168
Montana, 16168
New Mexico; correction, 16168
Survey plat filings:
Colorado, 16168
Withdrawal and reservation of lands:
Colorado, 16169
Wyoming; correction, 16169

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

Minerals Management Service
RULES
Royalty management:
Coal product valuation, 16105
NOTICES
Outer Continental Shelf; development operations coordination:
Chevron U.S.A., Inc., 16169

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Prompt pay, and architect-engineer definition Correction, 16194

National Highway Traffic Safety Administration
NOTICES
Highway traffic safety; radar detectors impact report availability, 16181

National Labor Relations Board
RULES
Health care industry; collective bargaining units, 16336

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic sea scallop, 16123
Gulf of Alaska groundfish, 16126
Gulf of Mexico shrimp, 16123
NOTICES
Meetings:
Pacific Fishery Management Council, 16145
South Atlantic Fishery Mangement Council; correction, 16146

National Park Service
NOTICES
Concession contract negotiations:
Golf Course Specialists, Inc., 16170

National Science Foundation
NOTICES
Agency information collection activities under OMB review, 16176

Navy Department
NOTICES
Meetings:
Naval Postgraduate School, Board of Advisors to Superintendent, 16156
Naval Research Advisory Committee, 16156

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Toledo Edison Co. et al., 16176
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 16177
Consolidated Edison Co. of New York, Inc., 16178

Occupational Safety and Health Administration
PROPOSED RULES
Construction safety and health standards:
Concrete and masonry construction; lift-slab operations, 16131

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Service
NOTICES
Meetings; Sunshine Act, 16192

Public Health Service
See also Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 16165

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Central Valley Project water conveyance improvements, CA, 16170

Research and Special Programs Administration
NOTICES
Hazardous materials:
Inconsistency rulings, etc.—
California Department of Motor Vehicles; training requirements for operators of vehicles carrying hazardous materials, 16314
Colorado Public Utilities Commission, 16326
Maryland Heights, MO; vehicles transporting hazardous wastes; bond requirement, 16308

Rural Electrification Administration
RULES
Telephone program:
Equipment and construction—
Loans and pre-loan procedures and requirements, etc.; correction, 16194

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 16178
Applications, hearings, determinations, etc.:
Vigilant Fund, Inc., 16178

Small Business Administration
NOTICES
License surrenders:
Basic Investment Corp., 16179
Central New York Small Business Investment Co., Inc., 16179
Meetings; regional advisory councils:
Texas, 16179
Applications, hearings, determinations, etc.:
Senior Service Capital, Inc., 16179

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 16166
Meetings:
Disability Advisory Committee, 16167

State Department
RULES
Victims of terrorism; compensation
Correction, 16195

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 16133
West Virginia, 16136

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

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Petitions accepted for annual review; results, 16190

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
See Customs Service; Fiscal Service; Foreign Assets Control Office

---

Separate Parts In This Issue

Part II
Department of Transportation, Coast Guard, 16198

Part III
Department of Health and Human Services, Food and Drug Administration, 16294

Part IV
Department of Transportation, Research and Special Programs Administration, 16308

Part V
Department of Transportation, Research and Special Programs Administration, 16314

Part VI
Department of Transportation, Research and Special Programs Administration, 16326

Part VII
National Labor Relations Board, 16336

Part VIII
Department of Energy, 16350

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
2.....16097
910.....16097
1745.....16194
1749.....16194

14 CFR
39.....16098
71 (4 documents).....16101–16103
97.....16104

Proposed Rules:
39.....16127

19 CFR

Proposed Rules:
171.....16195

21 CFR

Proposed Rules:
109.....16128
509.....16128
1301.....16130
1305.....16130

22 CFR
192.....16195

29 CFR
103.....16336

Proposed Rules:
1926.....16131

30 CFR
206.....16105

Proposed Rules:
920.....16133
948.....16136

33 CFR
100.....16106
117.....16106
165.....16107

40 CFR

Proposed Rules:
372.....16138

41 CFR
101–7.....16194

44 CFR
207.....16108

46 CFR

Proposed Rules:
30.....16198
31.....16198
33.....16198
35.....16198
70.....16198
71.....16198
75.....16198
78.....16198
90.....16198
91.....16198
94.....16198
97.....16198
107.....16198
108.....16198
109.....16198
112.....16198
154.....16198
160.....16198
161.....16198
167.....16198
168.....16198
188.....16198
189.....16198
192.....16198
196.....16198
199.....16198

47 CFR
36.....16110

48 CFR
52.....16194
203.....16111
204.....16111
208.....16111
213.....16111
215.....16111
225.....16111
228.....16111
247.....16111
252.....16111
701.....16122
704.....16122
709.....16122
725.....16122
728.....16122
752.....16122

50 CFR
204 (2 documents).....16123
650.....16123
658.....16123
672.....16126

Rules and Regulations

Federal Register
Vol. 54, No. 76
Friday, April 21, 1989

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

Office of the Secretary

7 CFR Part 2

Order in Which Officers of the Department Shall Act as Secretary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture to reflect changes in the order in which officers of the Department shall act as Secretary.

EFFECTIVE DATE: April 21, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447–6035.

SUPPLEMENTARY INFORMATION: Executive Order No. 11957, dated January 13, 1977 (42 FR 3295), empowers the Secretary of Agriculture to prescribe the order in which officers from the Department of Agriculture shall act as Secretary during periods when both the Secretary and the Deputy Secretary are not available to exercise the powers or perform the duties of the Office of Secretary.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart A—General

2. Section 2.5 is revised to read as follows:

§ 2.5 Order in which Officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order No. 11957, dated January 13, 1977 (42 FR 3295), in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the officials designated below shall act as Secretary in the order in which they are listed. Each official shall act only in the absence, sickness, resignation, or death of the immediately preceding official:

(1) The Under Secretary for International Affairs and Commodity Programs;

(2) The Under Secretary for Small Community and Rural Development;

(3) The General Counsel.

(b) In the case of the absence, sickness, resignation, or death of the Secretary, the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and the General Counsel, the Assistant Secretary for Marketing and Inspection Services, the Assistant Secretary for Food and Consumer Services, the Assistant Secretary for Natural Resources and Environment, the Assistant Secretary for Economics, the Assistant Secretary for Science and Education, the Assistant Secretary for Governmental and Public Affairs, and the Assistant Secretary for Administration shall act as Secretary in the order in which they have taken office as an Assistant Secretary. In the event that any two or more Assistant Secretaries shall have taken office on the same date they shall act as Secretary in the order listed herein.

Date: April 15, 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89–9561 Filed 4–20–89; 8:45 am]
BILLING CODE 3410–14–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 662]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 662 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period April 23 through April 29, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 662 (§ 910.962) is effective for the period April 23 through April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act,

and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on April 11, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreement and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.962 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.962 Lemon Regulation 662.

The quantity of lemons grown in California and Arizona which may be handled during the period April 23, 1989, through April 29, 1989, is established at 350,000 cartons.

Dated: April 19, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–9782 Filed 4–20–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-14-AD; Amendment 39-6195]

Airworthiness Directive; Piper PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 87–08–08, and all revisions thereto, applicable to certain Piper PA–28 and PA–32 series airplanes. This AD required, (1) a visual inspection with a 10-power magnifying glass and a dye penetrant inspection of the lower spar cap for both wings; (2) replacement of any spars found to be cracked; and (3) visual inspection of the wing upper skin for cracks and repair as required. This AD was issued following an in-flight wing failure on a Piper PA–28 airplane. Subsequent to its issuance, the FAA has learned that two Piper PA–32–300 airplanes were found to have similar type cracks. Piper Aircraft Corporation has presented evidence that these airplanes were subjected to heavy use and extensive damage. An extensive evaluation of the fracture surface from these airplanes has shown that it would require an extraordinary stress level to produce the growth rate of those cracks. Therefore, such failure is not likely to exist or develop in other Piper Model airplanes of the same type design operated in a normal manner.

EFFECTIVE DATE: May 22, 1989.

ADDRESSES: Piper Service Letter No. 997, dated May 14, 1987, and Piper Service Bulletin No. 886, dated June 8, 1989, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, ACE–120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991–2910.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by rescinding AD 87–08–08, Amendment 39–5615; AD 87–08–08R1, Amendment 39–5669; and AD 87–08–08R2, Amendment 39–5731, pertaining to certain Piper PA–28 and PA–32 series airplanes was published in the **Federal Register** on August 31, 1988 (Volume 53, No. 169, page No. 33501). The proposal resulted from a reevaluation of AD 87–08–08, Amendment 39–5615 (52 FR 15302, April 28, 1987), which was issued to require on certain Piper Model PA–28 and PA–32 series airplanes: (1) The removal of both wings and a visual inspection with a ten power magnifying glass and a dye penetrant inspection of the lower spar cap for both wings; (2) The replacement of any spars found to be cracked; and (3) visual inspection of the wing upper skin for cracks and repair as required. AD 87–08–08R1, Amendment 39–5669 (52 FR 29505, August 10, 1987), which was issued effective August 12, 1987, revised the AD to delete the Model PA–28–201T since it was verified that its spar design configuration was different in detail and should not have been included. On September 28, 1987, the AD was suspended by AD 87–08–08R2 (Amendment 39–5731, 52 FR 35907) pending further evaluation, since it was becoming apparent, from the relevant data being collected, that only those airplanes used in a severe operating environment were susceptible to fatigue cracks.

The original AD was issued following an in-flight wing separation of a Piper PA-28-181, S/N 8090115, on March 30, 1987, near Marlin, Texas. The airplane was flying low level pipeline patrol at the time of the accident. Investigation revealed that the left wing separated from the airplane at the lower spar wing root attachment to the fuselage. National Transportation Safety Board, FAA, and Piper Aircraft Corporation personnel determined that the lower cap on the main spar had sustained a fatigue failure. The lower cap had a fatigue crack across its forward face just outboard of the outboard attachment hole. During the time that the unrevised AD was in effect, approximately 560 spar inspections were performed. These inspections resulted in three additional reports of spar cracks in two PA-32-300 airplanes operated in Alaska. It was determined that these airplanes had been operated in a severe environment based on repairs recorded in the airplane logbooks and their general condition. The environment included rough rock/gravel fields and overweight operation. Prior to the accident leading to the issuance of the original AD, neither the FAA nor the Piper Service Department had received a report of problems in the area where the cracks occurred. However, the FAA realized that the inspections required would necessitate the removal and reinstallation of high tolerance critical wing spar attachment bolts; and, that if this was not done carefully, such process could cause damage to the wing spar cap material that could in turn result in a future fatigue failure. There are airplanes in the fleet with 19,000 plus hours time-in-service (TIS) that complied with the inspections of the AD and reported no cracks found.

Fatigue tests were conducted on a full-scale test article in the late 1950's and early 1960's prior to certification of the PA-28. These tests were run to the equivalent of 300,000 unfactored cycles with no failure. The FAA has carefully reviewed all of the available information including a credible fracture mechanics analysis. Striation counts on the fracture surface of the spar cap removed from one airplane showed that it would require extraordinary stress levels to produce the growth rate found. Airplanes operated in a normal general aviation type environment would not be exposed to sufficient loads to create these high stress levels. Therefore, it is concluded that the cracks found were isolated occurrences and those failures are not likely to exist or develop in other PA-28 series or PA-32 series airplanes operated in a normal manner.

In addition, Piper conducted an extensive fracture mechanics and fatigue analysis program to establish more accurately an inspection threshold and appropriate reinspection intervals based on different categories of airplane operations. Their study showed that airplanes used for low level pipeline patrol have a fatigue life approximately 20 times less than airplanes used for normal operations. Piper issued Service Bulletin (SB) No. 886, dated June 8, 1988, addressing the spar damage that can occur from different types of operational usage and providing applicable inspection thresholds, intervals, and procedures for detecting damage. This SB should serve to alert owners and operators of PA-28 series or PA-32 series airplanes used in severe operational environments to inspect the wing spar/fuselage attachments. In addition to this SB, information will be provided in the appropriate maintenance manuals to fully ensure that pilots and mechanics are aware of the effect severe operational usage has on the structural durability of an airplane, and the need for repetitive inspections of the wing spar attachment area for cracks. The SB also specified an initial inspection threshold of 30,600 hours TIS for normal usage airplanes which was also based on the above mentioned study. Since the high time airplane in the fleet has only accumulated approximately 19,000 hours TIS, and furthermore, only a relatively few airplanes have accumulated more than 10,000 hours TIS, no action is deemed necessary at this time. The FAA will continue to monitor the service history of these high time airplanes and as the 30,600 hour TIS threshold is approached, appropriate regulatory action may be considered. Consequently, as a result of the approximately 560 wing spar inspections, the fatigue study, and the SB, the FAA proposes to rescind AD 87-08-08.

Interested persons have been afforded an opportunity to comment on the proposal. Forty-seven commentors responded. Forty-five of the commentors provided responses to the proposals that were similar in nature. First and foremost, these forty-five commentors supported rescinding the AD. Nearly half of the commentors stated there was a lack of justification for an AD. The possible adverse effect on wing attachment structure caused by wing removal and reinstallation was mentioned by several commentors. Several of these commentors cited airplanes with wing cracks which were the result of use in severe operational environments. Other commentors pointed out the lack of any real safety benefits arising from the AD. The commentors citing a lack of justification for the AD were doing so on the basis of the many inspections performed on airplanes around the world without detecting cracks, except for those two airplanes in Alaska that were operated in a severe environment. Since there is such a large fleet of airplanes and the approximate 560 inspections represent a substantial sample, this does provide a sound basis for this assumption. Furthermore, the extensive fracture mechanics and fatigue analysis programs submitted to the FAA by Piper concerning airplanes with less than 30,000 hours, provide additional evidence that airplanes used for normal flight should not be affected. Wing removal and reinstallation was a concern from the time the original AD was considered. The fatigue life of a joint is highly dependent on the quality of the hole. Removal and replacement of tight-fitting bolts can create stress risers which result in earlier than usual fatigue failures. The risk of damage during this operation can be higher than the risk of failure on airplanes operated in a more benign environment. As some of the commentors mentioned, the cracks that have been documented have occurred only on airplanes that fall in the categories of abused airplanes or those used in a severe operating environment. Examination of the airplane log books of the airplanes that were operated in Alaska makes it quite evident that the airplanes were subjected to severe use.

The examinations of the right inboard section of spar from one of those airplanes by an independent laboratory reveal that at some point it was subjected to abnormally high loads. The same laboratory examined the cracked spar of the pipeline patrol airplane that crashed and observed that the problem resulted from an unusual use of the airplane. The commentors who cited a lack of safety benefits indicated that there is no structural problem based on the inspections and accordingly, no substantiated safety benefit commensurate with the cost. For the general flying public who do not use their airplanes in any of the risk categories, the wing spar inspections are supporting evidence. In fact, the FAA mandated inspection program did not find cracks other than in the Alaskan airplanes and the fatigue analysis/fracture mechanics program reports corroborate the commentors' opinions. However, for those airplanes that are abused or operated in a severe environment, there are safety benefits

since the inspection of airplanes in accordance with Piper SB No. 886 could detect a crack that may represent a potential for a catastrophic failure. The FAA position is to rescind the AD and encourage voluntary compliance with the SB. There were eighteen comments regarding cost. They were outright statements that the cost of this inspection is extremely high or the safety benefits were not commensurate with the cost of the inspection. The FAA agrees. A commentor responded that Piper Aircraft Corporation issued FAA-approved SB No. 886, dated June 8, 1988, which provides for an inspection program for the wing spars in PA-28 and PA-32 series airplanes. The commentor stated that only those airplanes subjected to "severe" operational conditions, those damaged from exposure to "extreme" usage, or those for which the operational histories are "unknown" are candidates for wing spar inspections at a relatively low number of hours TIS. The commentor is concerned that none of the inspections established in SB No. 886 are required inspections. The commentor further states that the operating histories of many of the older airplanes may be difficult if not impossible to accurately establish, and the owners of these airplanes may tend to ignore the provisions of SB No. 886. As a consequence, the commentor believes that unless the provisions of SB No. 886 are made mandatory by airworthiness directive, the probability of further wing spar failures may be significant among the approximately 38,500 PA-28 and PA-32 airplanes that are affected. Therefore, the commentor believes that the AD should be amended to mandate the inspection provisions of Piper SB No. 886. However, the FAA has no evidence to indicate that the vast majority of airplanes are utilized in abnormal operating environments. The FAA believes that the owners/operators of airplanes used for this type of flying are concerned enough about flying safety to comply with the SB if their airplane is subjected to one of the categories of usage specified. As the commentor pointed out, it is difficult, if not impossible, to accurately establish the operating histories of the older airplanes. If the FAA mandated SB No. 886 with an AD, it would be impossible for the FAA to establish conclusively which airplanes must comply with the SB. Therefore, from an enforcement standpoint, the FAA would find it difficult, if not impossible, to require compliance with the AD because positive proof of the airplane usage would be lacking. Consequently, the FAA position remains to rescind the AD and encourage voluntary compliance with the SB.

Another commentor who did not concur with rescinding the AD addressed the operating environment of the airplanes in Alaska with known wing spar cracks. The commentor suggested that the spar cracks resulted from a loading environment which produced high-cycle fatigue failures rather than severe usage resulting in structural static overloads. The commentor made reference to the spar crack examination that showed approximately 20,000 relatively uniform striations as strong evidence of high-cycle fatigue. He expressed a concern that cracks are small and hard to detect and although the basic steps of dye penetrant testing are known to most aviation technicians, the individual techniques can cause significant variations in the results. The commentor further denied claims of overgross and rough field operations and also denied that the airplanes were highly modified. Even so, he did mention that the Alaskan airplanes did endure a lot of use and varying degrees of main gear damage. He alleged that turbulence in Alaska is generally not as significant as that found during summer afternoons and in mountainous areas of the lower 48 States. He requested that a caution note should be added to the AD requiring particular attention to the front spar attach point bushing, as it is very small and easily lost when reinstalling the wings, and cannot reliably be determined to be in place once the wing is installed. Also, the commentor indicated that the AD should show the location and orientation of the tapered skins underneath the spar cap where the main spar is bolted into the fuselage. He also indicated that an experienced shop can remove PA-28/32 wings for inspection easily and quickly with little chance of damage to the airplane. Furthermore, he stated that the inspection and reinspection intervals should be established after new studies are made by an independent source. He recommended that "Classes of Service" published in the Piper SB should be discarded and that the AD should be reissued.

The commentor's position of excluding overload and severe use in favor of high cycle fatigue does not adequately substantiate that the Alaskan airplanes only engaged in normal usage. Piper and FAA engineers went to Alaska to observe the cracks in wing spars of the Alaskan airplanes. Those airplanes revealed landing gear modifications per STC SA281AL. The nose and main tires on the airplanes were 6-ply rating Goodyear 8.00-6 and 8.50-6, respectively. The tires were inflated to 35 psi and the struts inflated to expose an additional 2 inches of strut. Also, a Cleveland 199-62 wheel and brake conversion kit was used.

Investigation revealed the STC was for nose gear only and the main gear modification was apparently approved by FAA Form 337 (field approved). The airplane logbook entries showed several significant structural replacements/repairs. There were numerous entries in both airplane logbooks of landing gear scissors being replaced. Physical observations of the two airplanes revealed other apparent replacement/repairs and other damage. It was determined that the airplanes were occasionally used to haul 1/2 ton caribou and snowmobiles, as well as operate from tundra, ice and gravel bottoms. Also, gussets were added to the engine mount gear attach area due to mount failures induced by nose gear loads. An analysis by an independent laboratory of the accident PA-28-181 airplane concluded that the problem results from unusual use of the airplane. This included observation of striation spacing which suggests high stress (low cycle) fatigue. It is apparent that cracks will not initiate unless fretting occurs. The area was inspected using a stereomicroscope and a scanning electron microscope. During the fracture surface examination, striation spacing counts were performed. Results of this analysis indicated the load cycles applied (which were sufficient to cause crack propagation) from the time the crack began to propagate from a depth of 0.030 inches until it failed would be approximately 15,000 to 20,000 cycles. This is a low number of cycles and from a knowledge of fatigue, it is apparent that high stresses (high loads) would be required to cause crack propagation to critical crack. This appears to relate to the abnormal loads incurred in pipeline patrol airplanes.

In regard to methods of inspections several alternatives were investigated. Piper contracted with a consulting firm who specializes in non-destructive test methods. They evaluated eddy current (hole and surface probes), ultrasonic, radiographic (x-ray), visual (magnified), and dye penetrant or fluorescent NDI methods. Their conclusions are as follows:

Eddy Current—Ultrasonic—Radiographic

—No evidence of adequate reliability.

—Would require technical specialists.

—Limited access in the field to

equipment.
—Known damage must be found to establish a model.
—If in doubt, remove wing.
Visual with Magnification—Dye Penetrant Verification
—Highly reliable.
—No extraordinary training or experience required.
—High confidence level of detection.

In his efforts to show that the Alaskan airplanes were utilized mostly in normal flight and not abused or highly modified, the commentor seemed to confirm just the opposite. He mentioned, as previously noted, that the airplanes did suffer a lot of use and sustained various degrees of main gear damage. The FAA regards the commentor's statements, that turbulence is generally not as significant as that found during summer afternoons and in mountainous areas of the lower 48 states, as unverified. He did not offer any substantiating data to support his allegations.

His comment regarding the ease with which an experienced shop can remove PA-28/32 wings for inspection easily and quickly with little chance of damage to the airplane, is not supported by others. In response to an earlier comment it was noted that removal and replacement of tight fitting bolts can create stress risers which result in premature fatigue failures. His comments pertinent to a caution note that should be added to the AD regarding the front attach bushing and tapered shims underneath the spar caps, articulate a problem that has previously been discussed with Piper. Piper has prepared a change to the maintenance manual that reflects the correct procedure to follow with this installation. The commentor requested that the "classes of service" published in the Piper SB should be discarded and the AD reissued after studies by an independent source. The FAA has determined that additional studies would serve no useful purpose. The fracture surfaces were previously examined by an independent lab. Also, Piper contracted with Lockheed-Georgia Company to conduct the fracture mechanics evaluation which was used to establish the inspection and reinspection intervals incorporated into the SB. The FAA position, which is based upon the data collected from the inspections, the independent laboratory analysis of the fracture surface, the fracture mechanics/fatigue analysis submitted by Piper and observations of the Alaskan airplanes, is to rescind the AD and to encourage voluntary compliance with the SB. Therefore, the proposal is not being changed in light of this comment. Accordingly, the proposal is adopted without change.

There are approximately 38,500 airplanes affected by this action. Since Revision 2 to the AD suspended the effective date of the AD, the cost of this Rescission is estimated to be negligible to the private sector.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By rescinding AD 87-08-08, Amendment 39-5615; AD 87-08-08R1, Amendment 39-5669; and AD 87-08-08R2, Amendment 39-5731.

This amendment becomes effective on May 22, 1989.

Issued in Kansas City, Missouri, on April 6, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-9587 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ACE-21]

Alteration of Transition Area—Estherville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Estherville, Iowa. An instrument approach procedure for the Estherville, Iowa, Municipal Airport based on the Swan Lake nondirectional radio beacon (NDB) has been canceled. Accordingly, that portion of the Estherville transition area airspace designed to protect this approach procedure is no longer required and is being deleted from the present transition area description. Action is also taken herein to correct minor errors in the coordinates of the Estherville Airport.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: .

History

On December 23, 1988, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations, (14 CFR Part 71) so as to alter the transition area at Estherville, Iowa, (53 FR 51823). Action is also taken herein to correct minor errors in the Estherville Airport coordinates.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Except for editorial changes, this amendment is the same as that which was proposed in the Notice. Section 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the description of the Estherville, Iowa, transition area. An instrument approach procedure for the Estherville, Iowa, Municipal Airport

based on the Swan Lake NDB has been canceled. Therefore, that portion of the Estherville, Iowa, transition area designed to protect this approach is no longer required and the Estherville transition area is being redescribed to delete this airspace.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (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.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Estherville, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6½ mile radius of the Estherville Municipal Airport (lat. 43°24'30"N., long. 94°44'46"W.); within 3 miles each side of the 175° radial from the Estherville VOR (lat. 43°24'37"N., long. 94°44'20"W.), extending from the 6½ mile radius area to 8½ miles south of the VOR; within 3 miles each side of the 340° radial from the Estherville VOR extending from the 6½ mile radius areas to 8½ miles north of the VOR, excluding that portion that overlies the Emmetsburg, Iowa, Transition Area.

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on March 27, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-9591 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-22]

Alteration of Transition Area—Sac City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Sac City, Iowa. An instrument approach procedure for the Sac City, Iowa, Municipal Airport utilizing the Sac City nondirectional radio beacon (NDB) has been canceled. Accordingly, that portion of the Sac City transition area airspace designed to protect this approach procedure is no longer required and is being deleted from the present transition area description. Action is also taken herein to correct minor errors in the coordinates for the Sac City Airport.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On December 23, 1988, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area at Sac City, Iowa (53 FR 51824). Action is also taken herein to correct minor errors in the coordinates for the Sac City Airport and the Sac City NDB.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Except for editorial changes, this amendment is the same as that which was proposed in the Notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the description of the Sac City, Iowa, transition area. An instrument approach procedure for the Sac City Municipal Airport, utilizing the 138° bearing of the Sac City NDB has been canceled. Therefore, that portion of the Sac City transition area designed to protect this approach is no longer required and the Sac City transition area is being redescribed to delete this airspace.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (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.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Sac City, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6½ mile radius of the Sac City Municipal Airport (lat. 42°22'49" N., long. 94°58'46" W.), within 3 miles each side of the 172° bearing from the Sac City NDB (lat. 42°22'33" N., long. 94°58'51" W.), extending from the 6½ mile radius area to 8½ miles south of the NDB.

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on March 27, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-9589 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-23]

Alteration of Transition Area—Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Vinton, Iowa. An instrument approach procedure for the Vinton Veterans Memorial Airpark, Vinton, Iowa, utilizing the Garrison nondirectional radio beacon (NDB) has been canceled. Accordingly, that portion of the Vinton, Iowa, transition area airspace designed to protect this approach procedure is no longer required and is being deleted from the present transition area description.

EFFECTIVE DATE: 0901 U.T.C., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: .

History

On December 23, 1988, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area at Vinton, Iowa (53 FR 51825).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the description of the Vinton, Iowa, transition area. An instrument approach procedure for the Vinton Veterans Memorial Airpark utilizing the 310° bearing of the Garrison NDB has been canceled. Therefore, that portion of the Vinton transition area designed to protect this approach is no longer required and the Vinton transition area is being redescribed to delete this airspace.

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

List of Subjects in 14 CFR part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (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.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Vinton, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Vinton Veterans Memorial Airpark (lat. 42°13'03" N., long 92°01'43" W.), and within 2 miles each side of the Garrison NDB (lat. 42°13'18" N., long. 92°01'12" W.), 103° bearing, extending from the 5-mile radius area to 7 miles east of the airport.

This amendment becomes effective at 0901 U.T.C. June 1, 1989.

Issued in Kansas City, Missouri, on March 27, 1989.

Clarence E. Newbern,

Manager, Air Traffice Division.

[FR Doc. 89-9588 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-31]

Alteration of Transition Area—Austin, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Austin, MN, transition area to accommodate a new VOR RWY 18 Standard Instrument Approach Procedure (SIAP) and a new VOR RWY 36 SIAP to Austin Municipal Airport, Austin, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Thursday, February 2, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the existing transition area airspace near Austin, MN (54 FR 5246). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area airspace near Austin, MN. The present transition area is being modified to accommodate a new VOR RWY 18 SIAP and a new VOR RWY 36 SIAP to Austin Municipal Airport, Austin, MN. The modifications will consist of increasing the 5 mile radius to an 8.5 mile radius, and increasing the lengths and widths of the north and south transition area extensions.

The development of these procedures requires that the FAA alter the designated airspace to ensure that the

procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition 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—[AMENDED]

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Austin, MN [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of the Austin Municipal Airport (lat. 43°40'00" N., long. 92°56'00" W.); within 4.25 miles each side of the Austin VOR 355 radial extending from the 8.5 mile radius to 15 miles north of the Austin Municipal Airport; and, within 4.25 miles each side of the Austin VOR 175 radial extending from the 8.5 mile radius to 15 miles south of the Austin Municipal Airport; excluding that portion which overlies the Rochester, MN, transition area.

Issued in Des Plaines, Illinois on April 10, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-9590 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25878; Amdt. No. 1398]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions. Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

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

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

By Subscription

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

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

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

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

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

days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on April 14, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—[AMENDED]

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

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

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

*** * * Effective July 27, 1989**

Andrews, SC—Andrews Muni, NDB RWY 36, Amdt. 3, Cancelled

*** * * Effective June 29, 1989**

Covington/Cincinnati, OH,KY—Greater Cincinnati Intl, ILS RWY 27L, Amdt. 10
Falmouth, KY—Gene Snyder, VOR-A, Amdt. 1
Jackson, MI—Jackson County-Reynolds Field, VOR RWY 14, Amdt. 18
Jackson, MI—Jackson County-Reynolds Field, VOR RWY 24, Amdt. 20
Jackson, MI—Jackson County-Reynolds Field, NDB RWY 24, Amdt. 13
Jackson, MI—Jackson County-Reynolds Field, ILS RWY 24, Amdt. 13
Asheville, NC—Asheville Regional, NDB RWY 34, Amdt. 17
Nashville, TN—Nashville International, RADAR-1, Amdt. 21

*** * * Effective June 1, 1989**

Monroe, LA—Monroe Regional, VOR RWY 4, Amdt. 17
Monroe, LA—Monroe Regional, VOR RWY 22, Amdt. 3
Monroe, LA—Monroe Regional, VOR/DME RWY 4, Orig.
Monroe, LA—Monroe Regional, VOR/DME RWY 22, Amdt. 8
Monroe, LA—Monroe Regional, VOR/DME RWY 31, Amdt. 1
Monroe, LA—Monroe Regional, NDB RWY 4, Amdt. 14
Monroe, LA—Monroe Regional, ILS RWY 4, Amdt. 20
Monroe, LA—Monroe Regional, ILS RWY 22, Amdt. 2
Monroe, LA—Monroe Regional, RADAR-1, Amdt. 4
Sherman-Denison, TX—Grayson County, VOR/DME-A, Amdt. 6
Sherman-Denison, TX—Grayson County, NDB RWY 17L, Amdt. 6
Sherman-Denison, TX—Grayson County, RNAV RWY 35R, Amdt. 2
Kingsville, TX—Kleberg County, NDB RWY 13, Amdt. 4
Kingsville, TX—Kleberg County, RADAR-1, Amdt. 4
Blacksburg, VA—Virginia Tech, LOC RWY 12, Orig.
Blacksburg, VA—Virginia Tech, NDB-A, Amdt. 1

*** * * Effective May 4, 1989**

Fort Lauderdale, FL—Fort Lauderdale/Hollywood Intl, LOC RWY 9R, Amdt. 3
New Bedford, MA—New Bedford Muni, LOC (BC) RWY 23, Amdt. 6

*** * * Effective April 6, 1989**

Kenosha, WI—Kenosha Muni, Lil RWY 6L, Orig.

The FAA published an Amendment in Docket No. 25861, Amdt. NO. 1397 to Part 97 of the Federal Aviation Regulations (VOL 54 FR NO. 66 Page 14072; dated Friday, April 7, 1989) under Section 97.25 and 97.29 effective May 4, 1989, which is hereby amended as follows:

Danville, VA—Danville Muni, LOC RWY 2, Amdt. 1; should read: Danville, VA—Danville Regional, LOC RWY 2, AMDT. 1, CANCELLED.
Danville, VA—Danville Muni, ILS RWY 2, Orig.; should read: Danville, VA—Danville Regional, ILS RWY 2, Orig.
Richmond, VA—Richmond Evelyn Bird Intl, ILS RWY 7, Amdt. 24; should read:
Richmond, VA—Richmond Evelyn Bird Intl, ILS RWY 7, Amdt. 24, CANCELLED

[FR Doc. 89-9592 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Coal Product Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Minerals Management Service (MMS) is soliciting further public comments on certain provisions of the recently adopted final coal product valuation regulations that were effective March 1, 1989. Comments may be submitted in writing and/or at a public meeting.

DATES: The public meeting will be held on May 4, 1989, from 8:30 a.m. to 4 p.m. Written comments must be submitted on or before June 5, 1989.

ADDRESSES: The public meeting will be held at the Sheraton Hotel and Conference Center, Bergen Park Conference Room, 360 Union Boulevard, Lakewood, Colorado, telephone (303) 987-2000.

Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 1989 (54 FR 1492), MMS adopted new coal product value regulations codified at 30 CFR Part 206 to replace the regulations in 30 CFR Part 203. The regulations that were adopted were the product of a lengthy public process including a proposed rulemaking on January 15, 1987 (52 FR 1840), a further notice of proposed

rulemaking on July 15, 1988 (53 FR 26942), and numerous public meetings, including representatives of the affected States, Indian Tribes and the coal and electric utility industries.

Since the rules were issued, the States (who receive 50 percent of the royalties from coal production from Federal lands) and Indian Tribes (who may be affected indirectly despite the express exemption in the regulations) have maintained that the exclusions for taxes and fees are of concern. Because of the significance of this issue to all affected parties, the Secretary of the Interior has decided to provide an opportunity for the States, Indian Tribes, industry and the public to provide comments to the Department.

MMS is soliciting both written comments and statements from interested parties at a public meeting. The public meeting will be an open discussion among representatives from industry, States, Indian Tribes, and all other interested persons, including the public, for the purpose of gathering new information, but MMS would like commenters specifically to address the following issues in detail, with objective data where possible:

- The fiscal impact of the regulations on the Federal Treasury.
- The fiscal impact of the regulations on the States and Indians.
- The impact of implementation of the regulations on coal production and enhancing the Nation's goal of increasing domestic energy resources.

II. Public comment procedures

A. Public Meeting

1. Procedure for requests to make oral presentations. The time and place for the meeting are identified in the "DATES" and "ADDRESSES" sections of this notice.

You may request to made an oral presentation. Request to make a presentation should be made to Mr. Dennis Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 326-3432 by May 1, 1989.

2. Conduct of the meeting. The MMS reserves the right to select the persons to be heard at the meeting (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the meeting. The length of each presentation may be limited, based upon the number of persons requesting to be heard. A Department of the Interior official will be designated to preside at the meeting.

A transcript of the meeting will be made. The entire record of the meeting, including the transcript, will be retained by MMS and made available for inspection in Room C420, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8 a.m. and 4 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

B. Written Comments

The public is also invited to participate in this proceeding by submitting data and comments in writing. All written comments should be submitted by 4:00 p.m. of the day specified in the "DATES" section to the appropriate address indicated in the "ADDRESS" section of this notice and should be identified on the outside envelop and on documents submitted with the designation "Comments on Coal Product Valuation Regulations." All comments received by MMS will be available for public inspection in Room C420, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. The MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

Date: April 18, 1989.

Barry A. Williamson,

Director, Minerals Management Service.

[FR Doc. 89-9719 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 89-013]

National Sweepstakes Regatta, Redbank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.103, for the National Sweepstakes Regatta between 8:00 am and 6:00 pm on August 11, 12, and 13, 1989.

The regulations in 33 CFR 100.103 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

DATES: These regulations will be implemented from 8:00 a.m. to 6:00 p.m. on August 11, 12, and 13, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1989 running of the National Sweepstakes Regatta on the Navesink River in Redbank, New Jersey. The regulations, 33 CFR 100.103, will be in effect from 8:00 am to 6:00 pm for three (3) days; August 11, 12, and 13, 1989. The event consists of several daily speedboat races of about 50 minutes each. All racing shall be held during the effective period of regulation. The regulated area is that portion of the Navesink River in Redbank, NJ between the New Jersey Route 35 bridge and a line running across the Navesink River connecting Guyon and Lewis Points. Further public notification of these regulations will be accomplished through publication of the regulations in the First Coast Guard District Local Notice to Mariners.

Drafting Information:

The drafters of this notice are Lt. L. Brown, Project Officer, First Coast Guard District Boating Safety Division, and Lt. J.B. Gately, project attorney, First Coast Guard District Legal Division.

Dated: April 4, 1988.

R.I. Rybacki,

Rear Admiral, U. S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-9558 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-88-19]

Drawbridge Operation Regulations; Carlin Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the vertical lift span bridge on State Route 14 across Carlin Bayou, mile 6.4 at Delcambre, Louisiana, by permitting the draw to open on signal from 5 a.m. to 9 p.m. and open on at least four hours advance notice from 9 p.m. to 5 a.m. This change is being made because of infrequent

requests for opening the draw during the prescribed advance notice period. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw between 9 p.m. and 5 a.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 21 November 1988, the Coast Guard published a proposed rule (53 FR 46885) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 5 December 1988. In each notice interested parties were given until 5 January 1989 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Comments

Two letters of comment were received in response to public notification of the proposed rule change. The National Marine Fisheries Service and the Federal Emergency Management Agency offered no objection to the proposed change. Therefore, in the absense of any objection to the proposed rule as published in (53 FR 46885) on 21 November 1988, the final rule is unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that very few vessels now pass the bridge during the advance notice period of 9 p.m. to 5 a.m. For that period, the bridge averages opening less than one time every three days. When the need arises, the vessels involved can reasonably give four hours notice for a bridge opening during that period by placing a collect call to the bridge owner at any time. Mariners requiring the bridge opening are repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

The advance notice for opening of the draw should be given by placing a collect call at any time to the LDOTD in Lafayette, Louisiana, telephone (318) 233–7404. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency, or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46, and 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.436 is added to read as follows:

§ 117.436 Carlin Bayou.

The draw of the S14 bridge, mile 6.4 at Delcambre, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: April 6, 1989.

W. F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–9559 Filed 4–20–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD8 89–03]

Safety Zone—Vicinity of Old River Control Structure, Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations in Title 33 § 165.802(b) by indicating that the resident engineer at Old River Control Structure is delegated the authority to permit entry into this safety zone.

DATES: This regulation became effective on 1 July 1988. Comments on this regulation must be received on or before May 22, 1989.

ADDRESS: Comments should be mailed to Commanding Officer (po), Marine Safety Office, New Orleans, 1440 Canal Street, New Orleans, LA 70112–2711. The comments will be available for inspection and copying at 1440 Canal St., New Orleans, LA, Room 1311. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LT(jg) Berard at (504) 589–4219.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been unnecessary. This regulation change should have little or no economic impact and no adverse comments are expected concerning the terms of the regulation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information: The drafters of these regulations are LT(jg) Berard, Project Officer for the Captain of the Port, and CDR J. A. Unzicker, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation: The U.S. Army Corps of Engineers have suspended picket boat operations at the

Old River Control Structures Mile 315 LMR AHP. The safety zone between miles 316.1 and 311.5 LMR is still necessary and will remain in effect. Any vessel desiring to enter this safety zone must first obtain permission from Captain of the Port New Orleans. The resident engineer at Old River Control Structure (WUG–424) is now monitoring marine radio traffic and is delegated the authority to permit entry into this safety zone. The purpose of the structures is to control the distribution of water between the Mississippi River, Red River, and Atchafalaya River. This safety zone assists in protecting the structures and thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

Federalism Implications: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165 [AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5

§ 165. 802 [Amended]

2. Section 165.802(b) is revised to read as follows:

(b) Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. The resident engineer at Old River Control Structure (WUG–424) is delegated the authority to permit entry into this safety zone.

Dated: March 27, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–9560 Filed 4–20–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 207

[Docket No. 207]

Disaster Assistance; Great Lakes Planning Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule with request for comments.

SUMMARY: Part 207 provides procedures for the implementation of section 202 of Title II of Pub. L. 100–707, the Great Lakes Planning Assistance Act of 1988 (The Act), enacted on November 23, 1988. The Act authorizes the Director of the Federal Emergency Management Agency to provide assistance to Great Lakes States in the establishment of State programs to reduce and prevent damage attributable to high water levels in the Great Lakes. The assistance would include a one-time grant to each Great Lake State of not more than $250,000 for:

(1) Preparing mitigation, warning, and emergency plans;

(2) Coordinating available State and Federal assistance;

(3) Developing and implementing nonstructural measures to reduce or prevent damage; and

(4) Assisting local governments in developing and implementing plans.

Each State receiving a grant is required to match it with an amount equal to 25 percent of the Federal grant. Each Great Lake State will have 1 year from the date of enactment, until November 23, 1989, to submit an application for the grant program. This timeframe is not dependent upon appropriation of funds by Congress. No grants will be awarded until sufficient funds have been appropriated.

DATE: This Interim Rule will be effective on April 21, 1989. Comments from the public will be accepted until June 12, 1989.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Karen A. Helbrecht, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street SW., Washington, DC 20472, Telephone (202) 646–3358.

SUPPLEMENTARY INFORMATION: Section 202 of the Great Lakes Planning Assistance Act allows the Great Lakes States to apply for a one-time grant of up to $250,000. Although funds for this program have not been appropriated, interested States must submit an application within 1 year after the date of enactment, by November 23, 1989. The application will be held until adequate funds have been appropriated. A brief technical proposal will serve as the initial application. It will consist of:

(1) The identification of the primary State agency responsible for managing the grant program,

(2) A general description of the project,

(3) Identification of the agency or organization responsible for implementing the project, and

(4) Estimate of total funds to be requested.

A subsequent formal grant application will not be required until funds for this grant program have been appropriated. At that time, more detailed guidance will be sent to the States concerning the process. The States will be given the opportunity to revise their technical proposal and resubmit it with the required financial forms. The financial forms will include Application For Federal Assistance, Standard Form (SF) 424; Budget Information, SF 424A–D (where appropriate); and Financial Status Report (short form), SF 269A.

Environmental Considerations

In compliance with the National Environmental Policy Act, an Environmental Assessment (EA) and Finding of No Significant Impact has been prepared and is on file in the Office of General Counsel. The EA discusses the need for, and the environmental effects of, the interim regulations. The Finding concludes that there will be no significant impact as a result of the regulations.

Executive Order 12291, "Federal Regulations"

This rule is not a major rule within the context of Executive Order 12291. It will not have an annual impact on the economy of $100 million or more. The

rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

Federalism

This rule is intended to assist Great Lakes States and local units of government in reducing and preventing damage attributable to high water levels in the Great Lakes. This program encourages Great Lakes States to develop their own program initiatives within the limits of authorized activity as allowed by the Act. The rule imposes no additional costs or burdens on the States, but rather, has long-term Federal and State cost-saving potential. The rule therefore has no federalism implications pursuant to Executive Order 12612 so as to warrant the preparation of a Federalism Assessment, because States can choose whether or not to apply for the grant program.

Paperwork Reduction Act

The collections of information in this proposed interim rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 et seq. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Ms. Francine Picoult, FEMA Desk Officer." The final rule will respond to any OMB or public comments on the information collection requirements.

Part 207 is added to 44 CFR Ch. I, Subchapter D, to read as follows:

PART 207—GREAT LAKES PLANNING ASSISTANCE

Sec.
207.1 General.
207.2 Definitions.
207.3 Eligibility.
207.4 Application procedures.
207.5 Project Management.
207.6 Technical Assistance.

Authority: Sec. 202, Pub. L. 100–707.

§ 207.1 General.

This part provides requirements and establishes general procedures for administration of one-time grants to States under the provisions of section 202 of the Great Lakes Planning Assistance Act of 1988, Pub. L. 100–707. The Act authorizes the Director of the Federal Emergency Management Agency (FEMA) to provide assistance to the Great Lakes States to reduce and prevent damage attributable to high water levels in the Great Lakes. The assistance would include a one-time grant of not more than $250,000 for preparation of mitigation and emergency plans, coordinating available State and Federal assistance, developing and implementing measures to reduce damages due to high water levels, and assisting local governments in developing and implementing plans to reduce damages. Each State receiving a grant shall match it with an amount equal to 25 percent of the Federal grant. The grant should be used to supplement and extend existing activities and programs, to the extent possible.

§ 207.2 Definitions.

(a) "Applicant" means a Great Lakes State.

(b) "Grant" means an award of financial assistance.

(c) "Grantee" means the State government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award. For the purposes of this regulation, the State is the grantee.

(d) "Grant Application" means the official request for funding under the Great Lakes Planning Assistance Grant program.

(e) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron, Lake Michigan, Lake Superior, and Lake St. Clair, to the extent those lakes are subject to the jurisdiction of the United States.

(f) "Great Lake States" means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

(g) "High Water" includes static water level, wind generated waves, and runup.

(h) "Nonstructural Measures", as the term is used in Part 207, are those actions taken to protect people and property from the effects of a hazard, but do not modify the nature, frequency, or intensity of the hazard. They include measures such as setbacks, land use and development standards, flood-proofing, and elevation or relocation of properties and structures at risk.

(i) "Structural Measures", as the term is used in Part 207, are those actions taken to protect people and property from the effects of a hazard by modifying the nature, frequency or intensity of a hazard. They include measures such as floodwalls, levees, retaining walls, jetties, groins and other engineering works designed to control flooding and erosion.

(j) "Subgrant" means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(k) "Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

(l) "Technical Proposal" means the initial submission by the State to FEMA indicating interest in the program and identifying projects for funding.

§ 207.3 Eligibility.

(a) *Applicant eligibility.* Each of the eight Great Lakes States (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) is eligible for this grant program. The State will be the grantee to which funds are awarded and will be accountable for the use of those funds. There may be subgrantees within the State.

(b) *Project eligibility.* Each State shall identify projects and programs in the grant application and technical proposal. Projects and programs funded through this grant must comply with all applicable laws and regulations, including 44 CFR Part 9, Floodplain Management and Protection of Wetlands, and 44 CFR Part 10, Environmental Considerations. Categories of projects and programs eligible for funding under this grant program are:

(1) Preparation of plans for mitigation, warning, emergency operations, and emergency assistance. These plans must meet the following conditions, where applicable.

(i) All plans should be specific to reducing and/or preventing damage due to high water.

(ii) Mitigation plans should identify specific measures or recommendations to limit and/or prevent damages.

(iii) Emergency plans should identify measures to protect lives, property, and facilities.

(iv) All plans should be part of an overall State program to evaluate hazards and develop recommendations regarding the Great Lakes.

(2) Coordination of available State and Federal assistance. This task would be accomplished by determining the availability of funds and programs (at the Federal, State, local, and private level) and identifying how to most effectively use those resources to protect against future damages.

(3) Development and implementation of nonstructural measures to reduce or prevent damages. These measures could include the establishment of setback or dune preservation requirements and/or other conditions on construction and reconstruction of public facilities, development of enforcement procedures

for nonstructural measures, and mapping flood and erosion hazard areas.

(4) Assist local governments in developing and implementing plans for nonstructural reduction and prevention of damages. This assistance would include providing a mechanism for local governments to apply for the grant program, assisting local governments in implementing mitigation measures, and providing technical assistance to local governments in developing nonstructural mitigation measures.

(c) *Duplication of programs.* Great Lakes Planning Assistance Grants cannot be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities.

(d) *Packaging of programs.* Great Lakes Planning Assistance Grants can be packaged or used in combination with other Federal, State, local, or private funding sources where appropriate. However, the Grants cannot be used to meet the non-Federal cost share requirements of other Federal programs.

§ 207.4 Application procedures.

(a) *General.* The grant applications are due to the appropriate FEMA Regional Director no later than November 23, 1989.

(1) *Technical proposal.* A technical proposal will serve as this initial grant application. As part of the proposal, the Governor shall identify the State agency that will be responsible for the overall management of the grant. The proposal shall also include the following:

(i) A general description of the project;

(ii) Identification of the agency or organization responsible for completing that project;

(iii) Estimate of total funds to be requested.

(2) *Grant application.* A formal grant application will not be required until such time as funds are appropriated for this grant program. At that time, the State will be given the opportunity to review and revise the technical proposal. The formal grant application will consist of the revised technical proposal and appropriate reports in accordance with 44 CFR Part 13.

(b) *Cost share requirement.* States receiving a grant shall match the grant with an amount no less than 25 percent of the amount of the Federal grant. Identification of allowable costs and rules for cost sharing are included in CFR 44 Part 13, §§ 13.22 and 13.24.

§ 207.5 Project management.

The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 44 CFR Part 13. The State is responsible for ensuring that subgrantees meet all program requirements.

§ 207.6 Technical assistance.

(a) *General.* Requests from a State to FEMA for technical assistance in carrying out any activity of this grant program shall be made by the Governor or his/her designated representative to the Regional Director (reference Section 202(c) of the Act).

(b) *Content of request.* The request for technical assistance shall indicate as specifically as possible the objectives, nature, and duration of the requested assistance; the professional disciplinary capabilities needed; the recipient agency or organization within the State; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(c) *State participation.* The request for assistance requires participation by the State in the technical assistance process. As part of its request for such assistance, the State shall agree to facilitate coordination among FEMA and all subgrantees in need of assistance.

Dated: April 12, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 89-9364 Filed 4-20-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 88-341; FCC 89-78]

Link-Up America

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted certain revisions to the Part 36 Link-Up America program rules. On February 27, 1989, the Commission adopted and released a change of the rules which eliminated two non-income criteria for those programs in which an applicants income eligibility is verified. In order to be eligible for assistance when income eligibility is verified, a residential subscriber must (1) meet the requirements of a state established income test, and (2) not be a dependent, unless the subscriber is more than 60 years of age. The Commission agreed with the Federal-State Joint Board that the rule change would extend universal service to low-income households.

EFFECTIVE DATE: February 27, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Povich, Industry Analysis Division, Common Carrier Bureau (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Decision and Order (FCC 89-78), adopted and released February 27, 1989. The full text of this Commission decision and the rules 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.

Summary of Decision and Order

1. On July 18, 1988, the Commission released a *Notice of Proposed Rulemaking* (MTS and WATS Market Structure, Link-Up America, and Amendment of Part 36 of the Commission's Rules), which proposed revising the eligibility requirements for the Link-Up America program, a federal assistance program designed to encourage low-income households, that are not on the telephone network, to subscribe to local exchange service by reducing initial service and installation charges.

2. The Federal-State Joint Board, and parties commenting on the Notice have indicated substantial support for eliminating the non-income eligibility criteria for those applicants who have met the requirements of a State-established income test. These eligibility rules were found to foreclose Link-Up service to over 15 percent of all applicants, and as the commentors demonstrate, the restrictions have prevented otherwise eligible persons from receiving the benefits of this telephone connection program. The Commission agrees that when income eligibility is verified, the non-income eligibility requirements of the Link-Up program may be eliminated. The Commission agreed with the Joint Board that it is costly and often infeasible for states and telephone companies to maintain the records necessary to verify the non-income criteria. The Commission found that the income eligibility criteria alone should be

sufficient to ensure proper targeting of the program.

3. In order to be eligible for assistance when income eligibility is verified, a residential subscriber must (1) meet the requirements of a State-established income test, and (2) not be a dependent, unless the subscriber is 60 years of age or older. Alternatively, when income is not verified, a residential subscriber may self-certify #1 and #2, and the entity receiving certification (state or company) must verify that the customer (3) has lived at an address where there has been no telephone service for at least three months, and (4) has not received assistance within the last two years.

Ordering Clauses

1. Accordingly, *it is ordered,* That the recommendations of the Federal-State Joint Board concerning federal assistance measures to aid low-income households in obtaining telephone service through the Link-Up America program ARE ADOPTED.

2. *It is further ordered,* That Part 36 of Title 47 CFR of the Commission's Rules IS AMENDED as set forth below. The Rules are effective with their publication and release date.

3. *It is further ordered,* That this proceeding is hereby terminated.

List of Subjects in 47 CFR Part 36

Communications common carriers, Telephone, Reporting and recordkeeping requirements, Uniform system of accounts.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 36 of Title 47 CFR is to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 221(c), 403, and 410(c) of the Communications Act of 1934 as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 221(c), 403, and 410(c).

2. Section 36.711 is amended by revising the introductory text of paragraph (a), and revising paragraphs (b), (c), and adding paragraph (d) to read as follows:

§ 36.711 Lifeline Connection Assistance.

(a) For purposes of this subpart, Lifeline Connection Assistance shall describe the following lifeline telephone assistance for eligible residential subscribers as defined in § 36.711 (b) and (c):

* * * * *

(b) In order to be eligible for assistance when income is verified, a residential subscriber must:

(1) Meet the requirements of a state established income test; and

(2) Not be a dependent for federal income tax purposes as defined in 26 U.S.C. Section 152 (1986) unless the subscriber is more than 60 years of age.

(c) In order to be eligible for assistance when income is not verified, a residential subscriber must meet the eligibility criteria in § 36.711(b)(1) and (b)(2) and:

(1) Have lived at an address where there has been no telephone service for at least three months immediately prior to the date that the assistance described in § 36.711(a)(1) and/or (a)(2) is requested from the telephone company; and

(2) Not have received assistance pursuant to § 36.711(a)(1) and/or (a)(2) within the last two years, with receipt of such assistance to be measured from the date of initiation of the telephone service for which assistance was provided.

(d) Charges assessed for commencing service include any state tariffed charges levied for connecting a subscriber to the network. These charges do not include security deposit requirements.

3. Section 36.721 is amended by revising paragraph (a)(1), (a)(2) introductory text, (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (a)(3) to read as follows:

§ 36.721 Telephone company eligibility for lifeline connection assistance expense allocation.

(a) * * *

(1) Must provide Lifeline Connection Assistance as defined in § 36.711(a)(1) and/or (a)(2) to eligible subscribers as defined in § 36.711(b) or (c);

(2) Shall verify that subscribers meet the eligibility criteria set out in § 36.711(b) or (c) provided that:

* * * * *

(ii) If the eligibility criterion in § 36.711(b)(1) is verified, then the criteria in § 36.711(c) shall not apply;

(iii) If the eligibility criterion in § 36.711(b)(1) is self-certified, then the eligibility criteria in § 36.711(c)(1) and (c)(2) shall apply and must be verified;

(iv) In all cases, the eligibility criterion in § 36.711(b)(2) may be self-certified.

(3) Shall file information with the Commission Secretary demonstrating that it is eligible for the additional interstate expense adjustment.

* * * * *

[FR 89-9493 Filed 4-20-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 204, 208, 213, 215, 225, 228, 247, and 252

[Defense Acquisition Circular (DAC) 88-6]

Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DOD).

ACTION: Final rules and interim rules as indicated.

SUMMARY: Defense Acquisition Circular (DAC) 88-6 amends the DoD FAR Supplement (DFARS) with respect to special prohibition on employment; instructions for completion of DD Forms 350 and 1057; contract files; contingency contracting thresholds; clarification of adequate price competition; waiver of submission of cost or pricing data; prohibition of certain contracts with foreign entities for the conduct of Strategic Defense Initiative Research, Development, Test, or Evaluation; separate bid bonds for construction contracts; and ocean transportation by U.S.-Flag vessels. This DAC contains editorial corrections, and also includes an information item with respect to safeguarding conventional arms, ammunition, and explosives within industry.

DATES: *Effective Date:* May 31, 1989, unless otherwise noted in the **SUPPLEMENTARY INFORMATION.**

Comment Date: Comments on Items X and XII are due no later than May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement

made by Defense Acquisition Circulars 86–1 through 86–5. Amendments made by DACs 86–6 through 86–16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988, revision of the CFR.

B. Public Comments

DAC 88–6, Item I

Public comments are not solicited with respect to this item because it is provided for information purposes.

DAC 88–6, Item II

A proposed rule with request for comments was published in the **Federal Register** on December 9, 1988 (53 FR 49694). Comments received were considered in the development of the final rule.

DAC 88–6, Items III, IV, VI, and VIII

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures. However, comments from small entities concerning the affected DFARS coverage will be considered. Please cite DAR Case 89–610D.

DAC 88–6, Items V and IX

Public comments are not solicited with respect to these items because they provide editorial corrections to the DFARS.

DAC 88–6, Item VII

A proposed rule with request for comments was published in the **Federal Register** on March 31, 1988 (53 FR 10409). As a result of public comments, the final rule clarifies (a) when certified cost or pricing data shall or shall not be required regarding adequate price competition; and (b) how adequate price competition exists in dual source programs.

DAC 88–6, Item X

Comments are invited. This interim rule is published prior to receipt of comments to implement the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100–180, at section 222. Interested parties should submit written comments to be considered in developing a final rule on or before May 22, 1989 to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, the Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–119 in all correspondence related to this subject.

DAC 88–6, Item XI

A proposed rule with request for comments was published in the **Federal Register** on December 23, 1987 (52 FR 48549). Public comments were considered in the development of this final rule.

DAC 88–6, Item XII

Comments are invited. This interim rule is published prior to receipt of comments to implement the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. Interested parties should submit written comments to be considered in developing a final rule on or before May 22, 1989 to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–47 in all correspondence related to this subject.

C. Regulatory Flexibility Act

DAC 88–6, Item I

Public comments are not solicited with respect to this item. The Regulatory Flexibility Act does not apply.

DAC 88–6, Item II

This rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it will not diminish any existing preferences for small businesses, affect small purchase procedures, impose either special skill requirements, administrative costs, or unusual business practices upon small business. It is also required by a statute requiring uniform application. A Regulatory Flexibility Analysis has therefore not been performed.

DAC 88–6, Items III, IV, V, VI, VIII, IX, and X

These rules do not constitute a significant revision within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. The Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 89–610D in correspondence.

DAC 88–6, Item VII

This final rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because most contracts are awarded to small entities on a competitive basis, and the detailed cost or pricing data will seldom, if ever be required under this rule.

DAC 88–6, Item XI

This final rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because 31 U.S.C. 9303 already allows a person to give a Government obligation as security. A proposed rule was published in the **Federal Register** on December 23, 1987 (52 FR 48549), and public comments were solicited. However, no public comments were received concerning the Regulatory Flexibility Statement.

DAC 88–6, Item XII

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et. seq., because this interim rule merely implements the 1904 Cargo Preference Act, and the requirements imposed on small entities are necessary to ensure compliance with that Act. The Cargo Preference Act requires that ocean shipment of covered supplies be shipped on U.S.-flag vessels, regardless of the size of the contracting entity. A Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties.

D. Paperwork Reduction Act

DAC 88–6, Items I, V, and IX

The Paperwork Reduction Act does not apply to these items because they either provide information or are editorial in nature.

DAC 88–6, Items II, III, IV, VI, VII, VIII, X, and XI

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88–6, Item XII

The Paperwork Reduction Act does not apply because this rule does not contain information collection

requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

Under current industry practice, freight forwarders already prepare and maintain copies of shipping documents, and the existing FAR Part 47 already requires contractors and subcontractors to provide notice of certain ocean shipments, in the form of copies of such shipping documents. The interim rule will expand this requirement to apply to more cargo, but the information to be forwarded should not require additional recordkeeping on the part of the affected contractors. These requirements are imposed by the Cargo Preference Act of 1904, 10 U.S.C. 2631. Federal agencies could not ensure compliance with the law if this information were not collected.

E. Determination To Issue an Interim Regulation

DAC 88–6, Item X

A determination has been made under the authority of the Secretary of Defense that this coverage be issued as an interim rule. This action is necessary to implement the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100–180, at section 222.

DAC 88–6, Item XII

A determination has been made under the authority of the Secretary of Defense that this coverage be issued as an interim rule. This action is necessary to implement the requirements of the Cargo Preference Act of 1904, in light of the February 2, 1988 Department of Justice opinion which concluded that the 1904 Act applies to supplies that are contracted for by the Military Departments that, at the time of shipment by sea are clearly identified as destined for military use, regardless of whether the Government has title at the time of shipment. These regulations are also necessary to establish procedures which are consistent with the decision of the Court of Appeals for the District of Columbia in *Rainbow Navigation, Inc. v. Department of the Navy*, 783 F.2d 1072 (D.C. Cir. 1986).

List of Subjects in 48 CFR Parts 203, 204, 208, 213, 215, 225, 228, 247, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

(Defense Acquisition Circular No. 88–6)
March 31, 1989

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective May 31, 1989.

Defense Acquisition Circular (DAC) 88–6 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Safeguarding Conventional Arms, Ammunition, and Explosives (AA&E) Within Industry (Information Item)

Item II of DAC #88–4 deleted the AA&E coverage at DFARS Subpart 223.71 and the related clause at 252.223–7003 because of the cancellation of DoDI 5220.30, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives (AA&E) at Contractor Facilities" (canceled December 28, 1988). The DoDI has been replaced by DoD 5100.76–M "Physical Security of Sensitive Conventional AA&E", as modified through Change 4, December 28, 1988, which is now the controlling document on AA&E. Appendix E of the DoD Manual provides physical security standards for DoD AA&E at contractors' facilities. The manual is available through the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650.

Item II—Special Prohibition on Employment (Final Rule)

Section 831 of the FY 1989 Department of Defense Authorization Act (Pub. L. 100–456) amended the provisions of 10 U.S.C. 2408(a) regarding employment prohibitions on persons convicted of fraud or other defense contract related felonies. The amendment added to existing prohibitions the additional prohibitions that defense contractors may not permit felons convicted of fraud or any other felony arising out of contracts with the Department of Defense to serve as a consultant to any defense contractor or in any other way as determined by regulation prescribed by the Secretary of Defense. This rule implements this amendment and adds "acting as an agent or representative" to the prescribed activities in order to make these prohibitions consistent with those contained in FAR 9.405. In addition, section 831 increased the period of these employment prohibitions to a minimum of 5 years and permits waiver only in the interest of national security. These amended prohibitions were effective with enactment of Pub. L. 100–456 on September 29, 1988. A proposed rule with request for comments was published in the **Federal Register** on December 9, 1988 (53 FR 49694). This final rule revises existing DFARS coverage to reflect the above-referenced amendments and to provide for the waiver procedure. This rule is effective immediately.

Item III—Instructions for Completion of DD Form 350, Individual Contracting Action Report (Over $25,000), and DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less (Final Rule)

Revisions are made to DFARS 204.6 to clarify and/or correct guidance for completing DD Form 350, Individual Contracting Action Report (Over $25,000), and DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less. Information concerning the Contractor Establishment Codes has been updated to show the current contact points.

Item IV—Contract Files (Final Rule)

DFARS 204.804–4 is revised to incorporate a requirement for the issuance of an Interim Contract Completion Statement (Notice of Physical Completion) by the office administering a contract, if other than the purchasing office. Issuance of this interim notice will assist purchasing offices in the timely completion of contract closeout actions. Other changes include substitution of the term "small purchase threshold" in place of references to "$10,000" in 204.804–5 and 204.804–70(a)(2), and deletion of the requirement for purchasing offices to issue a MILSCAP Format Identifier PK9, Contract Completion Statement, as cited in 204.804–5.

Item V—Editorial Correction to DFARS 208.405

DFARS 208.405–2(S–70) is revised to reflect the correct title which was changed at the time the coverage was revised in DAC #86–16.

Item VI—Contingency Contracting Thresholds (Final Rule)

DFARS 213.404(a)(3) is added to permit funds to be used up to $2,500 for each overseas transaction in support of contingencies declared by the Secretary of Defense.

DFARS 213.505–3(b)(1)(ii) is added to allow warranted contracting officers to use Standard Form 44 up to $25,000 for overseas transactions in support of contingencies declared by the Secretary of Defense.

Item VII—Clarification of Adequate Price Competition (Final Rule)

DFARS 215.6 and 215.8 are revised to clarify the existing coverage on Adequate Price Competition.

Clarification is needed to explain that adequate price competition may exist even where price is not a primary factor in evaluation of proposals, regardless of the type of contract contemplated. A definition of cost realism is included which is distinguished from the detailed cost analysis typically conducted in sole source procurements.

The Deputy Assistant Secretary of Defense for Procurement (DASD(P)) issued a memorandum dated May 1, 1987, on Adequate Price Competition. The memorandum expressed concern that contracting officers were requesting detailed cost or pricing data and then conducting detailed cost and profit analysis even though adequate price competition had resulted or was expected to result on the procurement. The memorandum stated that there should rarely be a need to obtain certified cost or pricing data in a competition although some cost data may be required to determine cost realism to ensure that the offeror adequately understands the scope of the work. Unnecessarily requiring cost or pricing data is not in the best interest of DoD because it leads to increased proposal preparation costs, extends procurement lead time, and wastes both contractor and Government resources. This final rule, effective May 22, 1989, implements the policy statement of the DASD(P) memorandum. A proposed rule with request for comments was published in the **Federal Register** on March 31, 1988 (53 FR 10409).

Item VIII—Certification of Cost or Pricing Data (Final Rule)

DFARS 215.804–3 is revised to provide, for nonprofit educational institutions and other nonprofit organzations, waiver of the requirement for certification, but not submission, of cost of pricing data for cost-reimbursement-no-fee contracts and subcontracts. This rule also completely exempts the Canadian Commercial Corporation and its subcontractors from submitting either cost or pricing data or a certification of any such data.

Item IX—Editorial Corrections to Part 225

(a) Section 225.001 "Definitions" is relocated to Section 225.101 to make the coverage consistent with the FAR.

(b) Paragraph 225.603(b)(3), *"Customs Forms and Duty-Free Entry Certificates"*, is redesignated as paragraph (5) to reflect correct sequence of paragraphs.

(c) Paragraph 225.603(b)(6), *"Immediate Entry and Release"*, is redesignated as paragraph (c) to conform to the FAR.

Item X—Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative Research, Development, Test or Evaluation (RDTE) (Interim Rule)

Subpart 225.7013, Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE, is added to implement the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100–180, at section 222. The coverage provides that Department of Defense funds may not be used for any contract with a foreign government or foreign firm for research, development, test or evaluation in connection with the Strategic Defense Initiative (SDI) Program unless the Secretary of Defense certifies to Congress in writing at any time during such fiscal year that work under the contract cannot be competently performed by a United States firm at a price equal to or less than the price at which it would be performed by the foreign government or firm. The prohibition does not apply to contracts awarded to a foreign government or firm if: (a) The contract is to be performed within the United States; (b) the contract is for research, development, test or evaluation in connection with antitactical ballistic missile systems; or (c) the foreign government or foreign firm agrees to share a substantial portion of the total cost. Further, the law does not apply to contracts awarded before its enactment on December 14, 1987, nor does it apply to subcontracts. A related clause is added at 252.225–7028.

Item XI—Separate Bid Bonds for Constuction Contracts (Final Rule)

DFARS 228.101 is revised and a clause at 252.228–7007 is added to require submission of separate bid bonds vice separate bid guarantees for construction contracts. This coverage requires that DoD prime contractors furnish a separate bid bond or certain other public debt obligations of the United States by the time set for opening of bids. A proposed rule with request for comments was published in the **Federal Register** on December 23, 1987 (52 FR 48549).

Item XII—Ocean Transportation by U.S.- Flag Vessels (Interim Rule)

DFARS Subpart 247.5 has been revised in its entirety, the clause at 252.247–7200 has been deleted, and a provision at 252.247–7202 and a clause at 252.247–7203 have been added to implement the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. For such cargo, this constitutes an approved class deviation from FAR Subpart 47.5 in its entirety, and from the clause at FAR 52.247–64.

Contractors and contracting officers should note the new requirement for a solicitation provision, requiring offerors to state whether ocean transportation may be required under the resultant contract or under any subcontracts. The cargo to which the U.S.-flag requirements apply is that which meets the new definition of "supplies" as defined in this coverage. The regulation no longer limits the application of the U.S.-flag requirements to supplies that are owned by the DoD at the time of ocean shipment.

Under the revised procedures, contracting officers are required to forward a copy of the first page of the applicable DD Form 350 to the U.S. Maritime Administration, when awarding a contract (other than a contract for direct purchase of ocean transportation services, or with a value below the small purchase threshold in FAR Part 13), which will require ocean transportation of supplies as defined in the subpart.

The revisions included in this DAC shall be effective for solicitations and resulting contracts issued on or after May 31, 1989. However, contracting officers are authorized to apply the provisions of this interim regulation prior to that time in lieu of the existing DFARS Subpart 247.5 and the existing clause at 252.247–7200, upon issuance of this DAC, if to do so will not unnecessarily delay procurements. When applied, these revisions supersede the deviation requiring the use of the clause at FAR 52.247–64 with its appropriate Alternate, as directed in Deputy Assistant Secretary of Defense Memorandum dated April 4, 1988.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below:

1. The authority for 48 CFR Parts 203, 204, 208, 213, 215, 225, 228, 247, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.571–1 [Amended]

2. Section 203.571–1 is amended by changing the period at the end of the first sentence to a comma and adding

the words "as a consultant, or as an agent or representative. The nature and length of the statutory prohibition depend upon the date of conviction."; and by removing the last sentence.

3. Section 203.571–3 is revised to read as follows:

203.571–3 Policy.

(a) It is DoD policy that a contractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve (1) in a management or supervisory capacity on any defense contract or subcontract, or (2) upon its board of directors, or (3) as a consultant, or (4) as an agent or representative, for a period of five years from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer, unless waived in accordance with agency procedures in the interests of national security.

(b) Contractors shall not allow a person, convicted on or before September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve in a management or supervisory capacity on any defense contract or subcontract or upon its board of directors, for a period of one year from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer.

203.571–6 [Added]

4. Section 203.571–6 is added to read as follows:

203.571–6 Waiver.

(a) Requests for waiver submitted under DFARS 252.203–7001(e) shall be reviewed by the contracting officer. If the contracting officer decides the requested waiver is not required in the interests of national security, the contracting officer shall deny the request and advise the contractor accordingly. If the contracting officer decides the requested waiver may be in the interests of national security, the contracting officer shall forward the request to the Head of the Agency or designee.

(b) The Head of the Agency or its designee shall report all waivers granted and the reasons therefor to the Under Secretary of Defense for Acquisition who shall forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

PART 204—ADMINISTRATIVE MATTERS

204.671–3 [Amended]

5. Section 204.671–3 is amended by adding before the period at the end of paragraph (d)(2) the words "where the contracting action was executed by GSA".

204.671–5 [Amended]

6. Section 204.671–5 is amended by substituting in paragraph (b) in paragraph (i) under "Item B5A" the words "the Federal Procurement Data Center (FPDC)" in lieu of the words "Dun & Bradstreet"; by substituting in paragraph (b) in paragraph (i)(D) under "Item B5A" the words "office assigned responsibility by FPDC to provide a code" in lieu of the words "representative at the following commercial telephone numbers: 215–776–4388/4389/4390/4391"; and by adding in paragraph (i)(D) under "Item B5A" immediately before the words "All requesters" the following: "Contracting offices may request a code by any of the following methods: *1.* Telephoning 800–397–4472 or 215–776–1710/1764/1769/1788; *2.* Telefaxing 215–398–3688; *3.* Mailing inquiries to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18195."; by substituting in paragraph (c)(4) in the second sentence between the word "and" and the word "blank" the designation "C13C" in lieu of the designation "C13"; by removing in paragraph (c) in paragraph (v) under Code B under Item C3 the words "Foreign Military Sales/"; by removing paragraph (vi) under Code B under Item C3; by redesignating the existing paragraph (vii) as paragraph (vi) and adding a note following the redesignated paragraph (vi) to read: "Note: DoD competition reports include the categories listed above and also include FMS awards and actions with another Agency in the category of "Not Available for Competition", although these actions are not reported in Item C3.)".

204.672–2 [Amended]

7. Section 204.672–2 is amended by adding before the period at the end of paragraph (c)(6) the words "where the contracting actions were executive by GSA".

204.672–5 [Amended]

8. Section 204.672–5 is amended by removing in paragraph (b) under "Line B2" the first word of the second sentence and capitalizing the word "Report"; by adding in paragraph (b) under "Line B2" a third sentence reading "Also report any actions placed directly with another Federal Agency on this line."; by adding in paragraph (c) immediately after the title a note in parentheses to read: "(Note: Actions reported in Lines B1 and B2 are not reported in Section C.)"; by substituting in paragraph (c)(i)(A) between the word "or" and the word "were" the word "offers" in lieu of the word "quotes"; by adding in paragraph (c)(ii) immediately following the introductory sentence a note in parentheses to read: "(Note: DoD competition reports also include awards to regulated monopolies, FMS awards/International Agreements and actions with another Agency in the category of "Not Available for Competition", but are not reported in Line C2.)"; and by removing in paragraph (c)(ii) the existing paragraphs (A), (D), and (E), and redesignating the existing paragraphs (B), (C), (F), and (G) as paragraphs (A) through (D) respectively.

9. Section 204.804–4 is amended by adding paragraph (a) (S–70) and by redesignating the existing paragraph as paragraph (b) to read as follows:

204.804–4 Physically completed contracts.

(a) (S–70) *Interim Contract Completion Statement (Notice of Physical Completion).* This notice will be used when the contract is administered by an office other than the purchasing office. When a contract, other than a small purchase, is physically completed and accepted, the Contract Administration Office (CAO) with primary contract administration responsibility will forward a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9 (Contract Physical Completion), to the purchasing office. When the DD Form 1594 is used as a notification of physical completion, Block 8, Remarks, will be annotated "Notice of Physical Completion". Block 8 will also contain the final acceptance date and the typed name and signature of a responsible official, and the date signed. Blocks 9b, 9c, and 9d of the DD Form 1594 will be left blank. This notification will be used to begin the contract closeout procedures specified in FAR 4.804–5.

* * * * *

10. Section 204.804–5 is amended by revising paragraph (a) (S–70); by removing in the last sentence of paragraph (b) the phrase in parentheses "(including final payment)"; by adding in paragraph (b) paragraph (1); by redesignating in paragraph (b) the existing paragraphs (1) through (4) as paragraphs (2) through (5); and by adding in the redesignated paragraph (4) between the word "completion" and the comma the words in parentheses

"(including final payment)"; to read as follows:

204.804-5 Detailed procedures for closing out contract files.

(a) (S-70) *When purchasing office administers the contract.* When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check-List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed, the purchasing office shall prepare DD Form 1594, Contract Completion Statement, for all contracts in excess of the small purchase threshold (see FAR 13.000). The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of the small purchase threshold, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in 204.804-70(a)(2).

* * * * *

11. Section 204.804-70 is amended by revised paragraph (a)(2), to read as follows:

204.804-70 Review, separation, and retirement of completed contract files.

(a) * * *

(2) *Official contract case file*—remove folder for completed contract from the active file series, mark each folder or folder tab "Completed *(Date)*" and place them in completed (inactive) cross-reference/locator file series; separate series should be established for contracts under the small purchase threshold (see FAR 13.000) to facilitate later disposal.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

12. Section 208.405-2 is amended by changing the title of paragraph (S-70) to read "Oral orders" in lieu of "Oral orders not to exceed $10,000."

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13. Section 213.404 is amended by adding paragraph (a)(3) to read as follows:

213.404 Conditions for use.

* * * * *

(3) The purchase is for overseas transactions up to $2,500 in support of contingencies declared by the Secretary of Defense.

* * * * *

14. Section 213.505-3 is amended by revising paragraph (b)(1) to read as follows:

213.505-3 Standard Form 44, purchase order-invoice-voucher.

(b)(1) The $2,500 limitation applies to all purchases except for—

(i) Aviation fuel and oil purchases which will not exceed $10,000; and

(ii) Overseas transactions by warranted contracting officers up to $25,000 in support of contingencies declared by the Secretary of Defense.

PART 215—CONTRACTING BY NEGOTIATION

215.608 [Amended]

15. Section 215.608 is amended by adding paragraph (a)(1) to read:

See also 215.805-70 regarding use of "cost realism analysis."

16. Section 215.801 is added to read as follows:

215.801 Definitions.

"Cost realism analysis", as used in this subpart, means a review of the cost position of an offeror's proposals to determine if the overall costs proposed are realistic for the work to be performed, if the costs reflect an offeror's understanding of the requirements, or if the costs are consistent with the various elements of the technical proposal.

17. Section 215.804-3 is amended by changing in the title the word "Exemption" to read "Exemptions"; by designating the existing paragraph (a)(1) as paragraph (a)(1)(ii); by adding paragraph (a)(1)(i); by adding paragraph (a) (S-70); by adding paragraphs (b)(1) and (b)(2); and by adding paragraph (b) (S-70); to read as follows:

215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a)(1)(i) When there is a reasonable expectation that adequate price competition will result on a particular procurement, the contracting officer should rarely have a need to require the submission or certification of cost or pricing data regardless of the type of contract. Unnecessarily requiring the submission of cost or pricing data is not in the best interest of the Government because it leads to increased proposal preparation costs, extends procurement leadtime, and wastes both contractor and Government resources.

* * * * *

(a) (S-70) The Department of Defense has waived the following requirements with respect to cost or pricing data and certification thereof:

(i) Certification, but not submission of, cost or pricing data for cost-reimbursement-no-fee prime and subcontracts with nonprofit educational institutions and other nonprofit organizations. However, subcontractors other than nonprofit educational institutions and other nonprofit organizations are still subject to the certification requirements and the contracting officer will require, by appropriate contractual provision, subcontractor compliance with certification requirements.

(ii) Submission or certification of cost or pricing data from the Canadian Commercial Corporation and its subcontractors.

(b)(1) Adequate price competition may exist for any contract including cost-reimbursement contracts, even though price is not the primary factor in the evaluation of proposals, provided that price is a substantial factor in the source selection criteria.

(2) If, after receipt of proposals, it is determined that adequate price competition does not exist, then cost or pricing data shall be obtained and certified as required (see FAR 15.804-2).

* * * * *

(b) (S-70) *Adequate Price Competition in Dual Source Programs.* (i) In the case of dual source programs, adequate price competition normally exists when prices are solicited across a full range of step quantities, normally including a 0-100 per cent split from at least two offerors who are individually capable of producing the full quantity, and

(A) The award is made to the offeror with the lowest evaluated price;

(B) When the award is split, if the combined price of both awards is the lowest evaluated price in the range of offers submitted; or

(C) When the combined price of both awards is not the lowest evaluated price in the range of offers submitted, if the price reasonableness of all prices awarded is clearly established on the basis of price analysis.

(ii) The procedures in paragraph (b)(S-70)(i) above may also be used in multiple source acquisitions, including those for the mobilization base.

* * * * *

18. Section 215.805-1 is added to read as follows:

215.805-1 General.

(b) See also 215.805-70 regarding use of cost realism analysis.

19. Section 215.805–70 is added to read as follows:

215.805–70 Cost realism analysis.

(a) Even when adequate price competition exists, it may be appropriate to perform a cost realism analysis (see 215.801) to ensure that there is a reasonable expectation that the proposed costs are consistent with the technical proposal, especially for cost-reimbursement contracts. Cost realism analysis should also be used when the solicitation contains new requirements that may not be fully understood by competing contractors; when there are quality concerns; or when past experience has indicated that contractors have proposed costs which have resulted in quality or service shortfalls.

(b) Information necessary to perform a cost realism analysis should be determined during procurement planning and development of the solicitation based upon the circumstances of the particular procurement. There are instances where there may be information available from Government sources to perform a cost realism analysis; in other instances information will have to be obtained from the offerors. In the latter case, the contracting officer shall request only those data necessary to perform the cost realism analysis, not the submission or certification of cost or pricing data.

PART 225—FOREIGN ACQUISITION

225.001 [Redesignated as 225.101 and Amended]

20. Section 225.001 is redesignated as section 225.101 and moved to Subpart 225.1; and the redesignated section 225.101 is amended by substituting in the first sentence of the introductory paragraph the word "in" in lieu of the word "through".

21. Section 225.603 is amended by redesignating paragraph (b)(3) entitled "*Customs Forms and Duty-Free Entry Certificates.*" as paragraph (b)(5); and by redesignating the last paragraph of the section as paragraph (c) in lieu of paragraph (6).

22. Section 225.7013 is added to read as follows:

225.7013 Prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDTE.

(a) *Definitions.* As used in this section:

"Competent" means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including a consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

"Foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

"United States firm" means a business entity other than a foreign firm.

(b) *Policy.* Section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100–180) prohibits the award of certain contracts, for the conduct of Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDTE), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm. For purposes of implementing this section, HCAs are authorized to make this certification (see paragraph (c)(2) below). Accordingly, except as provided for in paragraph (c) below, any funds appropriated to, or for the use of DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a Broad Agency Announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDTE in connection with the SDI. This prohibition, however, is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

(c) *Exceptions.* The prohibition shall not apply:

(1) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(i) The contract is to be performed within the United States; or

(ii) The contract is exclusively for RDTE in connection with antitactical ballistic missile systems; or

(iii) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share may be considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the U.S. and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(2) If the HCA has certified in writing, prior to contract award, that a contract for research, development, testing, or evaluation (other than for RDTE described in paragraph (c)(1)(ii) above) cannot be competently performed by a United States firm at a price equal to or less than the price at which the RDTE would be performed by a foreign government or firm.

(d) *Procedures.* (1) When awarding a prime contract to a foreign government or firm under paragraph (c)(2) above, the contracting officer or Source Selection Authority, as applicable, shall make a determination which will be the basis for the certification in paragraph (c)(2) above.

(i) The determination must describe the contract effort; state the number of proposals solicited and received from both U.S. and foreign firms; identify the proposed awardee and the amount of the contract; state that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the BAA; and state that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(2) If award is based on a determination under paragraph (d)(1) above, or award is based on other than full and open competition in accordance with FAR 6.3, or award is made as the result of an unsolicited proposal in accordance with FAR Subpart 15.5, then a copy of the certification (from paragraph (c)(2) above), and, as appropriate, the determination or justification and approval (J&A) shall be forwarded within 30 days of contract award to the SDI Organization, Attention: SDIO/MN, The Pentagon, Washington, DC 20301–7100.

(e) *Solicitation Provision.* Unless foreign participation is otherwise excluded, the contracting officer shall insert, in all competitively negotiated SDI solicitations for RDTE, a provision substantially the same as the provision at 252.225–7028, "Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE".

PART 228—BONDS AND INSURANCE

23. Sections 228.101, 228.101–1 and 228.101–3 are added to read as follows:

228.101 Bid guarantee.

228.101–1 Policy on use.

(b) Only separate bid bonds, or United States bonds, Treasury notes or other public debt obligations of the United States are acceptable for construction contracts.

228.101-3 Contract clause.

(b) The contracting officer shall insert the clause at 252.228-7007, Bid Bond, in lieu of FAR clause 52.228-1, in solicitations and contracts for construction.

PART 247—TRANSPORTATION

24. Subpart 247.5 is revised in its entirety, to read as follows:

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

Sec.
247.570 Scope.
247.571 Definitions.
247.572 Policy.
247.573 Procedures.
247.573-1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.
247.573-2 Direct purchases of ocean transportation services.
247.574 Solicitation provisions and contract clause.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

Sections 247.570 through 247.574 set forth the Department of Defense policies and procedures for implementing the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. For such cargo, this constitutes an approved class deviation from FAR Subpart 47.5 in its entirety. This subpart does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 2141 (b), which while applicable to the Department of Defense, does not require DFARS coverage in view of the fact that compliance with the 1904 Act has historically resulted in DoD's far exceeding the 1954 Act's requirements for shipment by private commercial carrier.

247.571 Definitions.

As used in this subpart:

"Armed services" means the Army, Navy, Air Force, Marine Corps, and Defense Agencies.

"Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication or assembly by the contractor or any subcontractor.

"Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

"Subcontractor" includes a supplier, materialman, distributor or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means all property except land and interests in land that is readily identifiable for eventual use by the armed services, or owned by the armed services, at the time of transportation by sea. It includes (but is not limited to) public works, buildings and facilities, ships, floating equipment and vessels of every character, type, and description, together with parts, subassemblies, accessories, and equipment; machine tools, material, equipment, and stores of all kinds; end items, construction materials and the components of the foregoing.

247.572 Policy.

(a) Authority Citation: 10 U.S.C. 2631.

(b) Supplies as defined in 247.571 shall be transported exclusively on U.S.-flag vessels unless:

(1) Those vessels are not available and appropriate notices are given and approvals received;

(2) The Secretary of the Navy finds that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the armed services are higher than charges to private persons for the transportation of like goods.

(c) The contracting officer shall ensure that contracts provide for the use of Government-owned vessels when the security classification prohibits the use of other than Government-owned vessels.

(d) The Cargo Preference Act of 1904 does not apply to ocean transportation of (1) products obtained for contributions to foreign assistance programs; or (2) products owned by agencies other than the Department of Defense. For these products, FAR Subpart 47.5 applies.

247.573 Procedures.

247.573-1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies to those acquisitions where ocean transportation will be used by a contractor or subcontractor in its performance of a supply, service or construction contract or subcontract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), as follows:

(1) In developing the Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) In developing appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) When the contracting officer is notified in accordance with the clause at 252.247-7203, Transportation of Supplies by Sea, that the contractor or subcontractor considers that:

(1) No U.S.-flag vessels are available: the contracting officer shall request confirmation from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC), that no U.S.-flag vessels are available.

(2) The freight charges to the armed services, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons having no involvement in the contract: the contracting officer may waive or approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment. Prior to granting such a waiver, the contracting officer shall solicit oral or written advice from the Commander, MSC or designated representative, MSC. The Commander, MSC shall consider, as appropriate, evidence from published tariffs, industry publications, the Maritime Administration, and other available sources when advising the contracting officer whether the waiver should be granted.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable: the contracting officer shall forward a report to the Commander, MSC through the head of the contracting activity and the Director, Office of Contracts and Business Management, MSC. The report shall take into consideration that the Cargo Preference Act of 1904 is, in part, a subsidy of the U.S.-flag commercial shipping industry which starts from the premise that lower prices can be obtained from foreign-flag shippers. Accordingly, the report should consider not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the mandatory use of U.S.-flag vessels in extraordinarily inefficient circumstances. If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy, via ASN(S&L) (CBM), for a determination.

(i) The report shall be in D&F format and include, as appropriate, an analysis of whether the cost of the armed

services is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of U.S.-flag rates charged on comparable routes; efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and any other relevant economic and financial considerations affecting the armed services.

(ii) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(d) When the successful offeror indicates in accordance with the solicitation provision at 252.247–7202, Representation of Extent of Transportation of Supplies by Sea, that supplies will be transported by sea under the resulting contract or subcontract, the contracting officer shall within 30 days of award forward one copy of the first page of the DD Form 350 for that contract to the Chief, Division of National Cargo, U.S. Maritime Administration, 400 7th Street SW., Washington, DC 20590.

247.573–2 Direct purchases of ocean transportation services.

(a) This subsection applies to those acquisitions where ocean transportation is the principal purpose of the contract such as Time Charter, Voyage Charters, Contracts of Affreightment, Dedicated Contractor Contracts of Affreightment, Ocean Bills of Lading, etc. These acquisitions shall be coordinated, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(b) The MSC shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with applicable laws and regulations. The Commander, MSC or designated representative is authorized to make any determination as to the availability of United States-flag vessels required to assure proper utilization.

(c) All solicitations for ocean transportation services for supplies owned by the armed services of the United States shall provide, as an evaluation factor, a preference for U.S.-flag vessels. No contract of the type described in paragraph (a) above shall be awarded for a foreign-flag vessel unless:

(1) The contracting officer determines in accordance with paragraph 247.573–1(c)(1) that no U.S.-flag vessels are available, and obtain approval of the Commander, MSC or designated representative; or

(2) The contracting officer determines in accordance with paragraph 247.573–1(c)(2) that the freight charges proposed by U.S.-flag vessels to the armed services are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC or designated representative, or

(3) The contracting officer performs the analysis and forwards the report in accordance with subparagraph (i) below, and the Secretary of the Navy determines that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) When the contracting officer believes, based solely on economic considerations, that the freight offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer shall forward a report through the head of the contracting activity to the Commander, MSC. The report shall take into consideration the factors in paragraph 247.573(b)(3). If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy for a determination. The report shall be in D&F format and shall include, as appropriate:

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.8 or profit in accordance with DFARS Subpart 215.9 including the basis for the contracting officer's conclusion that the costs are unreasonable or that the profit proposed exceeds that which the contracting officer determines is necessary to adequately motivate the contractor and compensate the contractor for the degree of risk incurred (i.e., the costs or profit should not be high as to make it unreasonable to apply the preference for U.S.-flag vessels). The report shall include, as appropriate, a description of efforts taken by the contracting officer, pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report shall be considered the referral to higher authority.

(B) An analysis of whether the cost to the armed services is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into account factors such as: the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of rates charged by other U.S.-flag carriers on comparable routes; efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.), and any other relevant economic and financial considerations affecting the armed services.

(C) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such differential may indicate a need for further review.

247.574 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 252.247–7202, Representation of Extent of Transportation of Supplies by Sea, in full text, in all solicitations other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13, or those where the contracting officer knows that ocean transportation of supplies as defined at 247.571 will not occur in the performance of the contract or subcontract thereunder.

(b) The contracting officer shall insert the clause at 252.247–7203, Transportation of Supplies by Sea, in all solicitations and contracts other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13.

(c) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses consistent with this subpart concerning the vessels to be used.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 252.203–7001 is revised to read as follows:

252.203–7001 Special prohibition on employment.

As prescribed in 203.571–5, insert the following clause in all solicitations and contracts other than those entered into using the small purchase procedures of FAR Part 13:

Special Prohibition on Employment (Mar 1989)

(a) *Definitions.* "Arising out of a contract with the Department of Defense", as used in this clause, means any act in connection with (1) attempting to obtain, (2) obtaining, or (3) performing a contract or subcontract of any agency, department, or component of the Department of Defense.

"Conviction of fraud or any other felony", as used in this clause, means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

"Date of conviction", as used in this clause, means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 prohibits a person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense from working in a management or supervisory capacity on any defense contract, or serving in various other capacities for a defense contractor, for up to five (5) years from the date of conviction, as set forth in paragraph (c) below. Defense contractors are subject to a criminal penalty of not more than $500,000 if they are convicted of knowingly employing a person under a prohibition or allowing that person to serve in violation of 10 U.S.C. 2408.

(c)(1) The Contractor agrees not to knowingly employ any person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow that person to serve either on its board of directors, as a consultant, or as an agent or representative for a period of five (5) years from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer, unless waived.

(2) The Contractor agrees not to knowingly employ any person, convicted on or before September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow that person to serve on its board of directors for a period of one (1) year from the date of conviction or for the period of any resultant debarment, whichever is longer.

(d) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as suspension or debarment, may direct the cancellation of the contract at no cost to the Government, or terminate this contract for default.

(e) The Contractor may submit written requests for waiver of the prohibitions in paragraph (c)(1) above to the Contracting Officer who will process such requests in accordance with DFARS 203.571–4. Requests shall clearly identify the person involved, the nature of the conviction and resultant sentence or punishment imposed, the reasons for the requested waiver, and an explanation of why waiver of the prohibitions of paragraph (c)(1) above is in the interests of national security.

(f) The Contractor agrees to include the substance of this clause, including this paragraph (f), appropriately modified to reflect the identity and relationship of the parties, in all subcontracts exceeding $25,000.

(End of clause)

26. Section 252.225–7028 is added to read as follows:

252.225–7028 Notice of prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDTE.

As prescribed at 225.7013(e), insert the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN GOVERNMENTS OR FIRMS FOR THE CONDUCT OF STRATEGIC DEFENSE INITIATIVE RDTE (MAR 1989)

(a) *Definitions.* As used in this solicitation:

"Competent" means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including a consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

"Foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than fifty percent (50%) of the stock is owned or controlled by one or more foreign nationals.

"United States firm" means a business entity other than a foreign firm.

(b) *Policy.* This provision implements section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100–180) which prohibits the award of certain contracts, for the conduct of Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDTE), to foreign governments or firms. Accordingly, except as provided for in paragraph (c) below, any funds appropriated to, or for the use of DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a Broad Agency Announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDTE in connection with the SDI. Foreign governments and firms, however, are encouraged to submit offers since this clause is not intended to restrict SDI access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(c) *Exceptions.* The prohibition does not apply to a foreign government or firm if:

(1) The contract is to be performed within the United States; or

(2) The contract is exclusively for RDTE in connection with antitactical ballistic missile systems; or

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share may be considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the U.S. and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that the contract cannot be competently performed by a United States firm at a price equal to or less than the price at which the RDTE can be performed by a foreign government or firm.

(d) The Offeror hereby certifies that it is ___ is not ___ a United States firm as defined in paragraph (a) above.

(End of provision)

27. Section 252.228–7007 is added to read as follows:

252.228–7007 Bid bond.

As prescribed in 228.101–3(b), insert the following clause in solicitations and contracts:

BID BOND (MAR 1989)

(a) The Offeror (Bidder) shall furnish a separate bid bond, or United States bonds, Treasury notes or other public debt obligations of the United States, in the proper form and amount, by the time set for opening of bids. Failure to do so may be cause for rejection of the bid. The Contracting Officer will return bonds or notes of the United States (1) to unsuccessful bidders as soon as practicable after the opening of bids; and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(b) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(c) Unless otherwise specified in the bid, the Bidder will (1) allow sixty (60) days for acceptance of its bid; and (2) give bond within ten (10) days after receipt of the forms by the Bidder.

(d) In the event the contract is terminated for default, the Bidder is liable for any cost of acquiring the work that exceeds the amount of its bid. The bid bond, or bonds or notes of the United States, is available to offset the difference.

(End of clause)

252.247–7200 [Removed and Reserved]

28. Section 252.247–7200 is removed and the section marked "Reserved."; section 252.247–7201 is added and the section marked "Reserved."; and sections 252.247–7202 and 252.247–7203 are added to read as follows:

252.247–7201 [Reserved]

252.247–7202 Representation of extent of transportation by sea.

As prescribed in 247.574(a), insert the following provision, in full text, in solicitations other than those for direct purchase of ocean transportation services, or those with an anticipated

value below the small purchase threshold in FAR Part 13, or those where the contracting officer knows that ocean transportation of supplies as defined in 247.571 will not occur in the performance of the contract or a subcontract thereunder.

REPRESENTATION OF EXTENT OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 1989)

The clause at 252.247-7203, Transportation of Supplies by Sea, will be included in any contract resulting from this solicitation. The Offeror is required to indicate whether transportation by sea is anticipated under the resultant contract by checking the appropriate blank as follows:

The Offeror represents that it ____ does ____ does not anticipate that any of the supplies, as defined in the above-referenced clause, will be transported by sea in the performance of any contract or subcontract resulting from this solicitation. Notwithstanding this representation, the Offeror recognizes and will comply with the requirements of the above-referenced clause.

(End of representation)

(End of provision)

252.247-7203 Transportation of supplies by sea.

As prescribed in 247.574, insert the following clause in all solicitations and contracts other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13.

TRANSPORTATION OF SUPPLIES BY SEA (MAR 1989)

(a) As used in this clause:

(1) "Armed services" means the Army, Navy, Air Force, Marine Corps, and Defense Agencies.

(2) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication or assembly by the contractor or any subcontractor.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property except land and interests in land that is readily identifiable for eventual use by the armed services, or owned by the armed services, at the time of transportation by sea. It includes (but is not limited to) public works, buildings and facilities, ships, floating equipment and vessels of every character, type, and description, together with parts, subassemblies, accessories, and equipment; machine tools, material, equipment, and stores of all kinds; end items, construction materials and the components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ United States-flag vessels, and no others, in the transportation by sea of any supplies to be furnished in the performance of its contractual obligations.

(c) If the Contractor or a subcontractor believes that (1) U.S.-flag vessels are not available for timely shipment; (2) the freight charges are excessive or unreasonable; or (3) freight charges are higher than charges to private persons for transportation of like goods, the Prime Contractor, including subcontractors through the Prime Contractor, may request from the Contracting Officer, in accordance with paragraph (d) below, authorization to ship in foreign-flag vessels or designation of available U.S.-flag vessels. If the Prime Contractor's request to ship supplies in foreign-flag vessels, whether on its own account or on account of a subcontractor, is granted in writing by the Contracting Officer, the supplies may be shipped on foreign-flag vessels in accordance with the approval. The Contracting Officer may condition approval to ship on a foreign-flag vessel on an equitable adjustment of the contract.

(d) The request for use of other than U.S.-flag vessels must be submitted in writing by or through the Prime Contractor to the Contracting Officer at least forty-five (45) days for matters concerning freight charges or for matters concerning availability prior to the sailing date for the shipper to meet its delivery schedules. Requests submitted after such date(s) will be processed as expeditiously as possible but the failure of the appropriate official to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. The request shall contain at a minimum:

(1) Type, weight, and cube of cargo.

(2) Required shipping date.

(3) Special handling and discharge requirements.

(4) Loading and discharge points.

(5) Name of shipper and consignee.

(6) Prime contract number.

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact with at least two (2) U.S.-flag carriers contacted by name and telephone number. Copies of telephone notes, telegraphic and facsimile messages or letters will be sufficient for this purpose.

(8) Certification, to the best of the certifying official's knowledge and belief, that the information provided under this paragraph (d) is accurate, complete and current as of the date of submission and that good faith efforts have been made to secure U.S.-flag transportation in a timely and efficient manner.

(9) Signature of an official of the Contractor eligible to sign claim certification under FAR 33.207(c).

(e) The Contractor agrees to furnish with each invoice submitted for payment a copy of the rated on-board vessel operating carrier's ocean-bills-of-lading executed since the date of the award of the contract, or executed since the previously submitted invoice. The operating carrier's ocean-bills-of-lading shall contain the following information:

(1) Applicable Government prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars.

(10) Name of the steamship company.

(f) The Prime Contractor shall ensure that within thirty (30) days after each shipment covered by this clause the shipper shall provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the shipping document cited in paragraph (e), reflecting each shipment made under the contract.

(g) Along with the submission of its final invoice under this contract the Contractor agrees to provide a representation that to the best of its knowledge and belief:

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only United States-flag vessels were used for all ocean shipments under the contract. Legible copies of rated on-board ocean-bills-of-lading or similar shipping documents have been submitted with the applicable invoices to the payment office, to the Contracting Officer and to the Maritime Administration in accordance with paragraphs (e) and (f) of this clause;

(3) Ocean transportation was used, and to the extent any non-U.S.-flag vessels were used, the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. These shipments were as follows:

Item description	Contract line items quantity
Total.....	

(h) If the final invoice does not include the required representations and documentation, it will be rejected and returned to the Contractor as an improper invoice for the purposes of the clause of the contract entitled "Prompt Payment". In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(i) The Contractor shall include this clause, including this paragraph (i), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(End of clause)

[FR Doc. 89-9295 Filed 4-20-89; 8:45 am]
BILLING CODE 3810-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 704, 709, 725, 728, and 752

[AIDAR Notice 89-2]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The A.I.D. Acquisition Regulation (AIDAR) is being amended to correct various typographical errors and update references, clarify certain provisions, and specify authority in A.I.D. for approving waivers under FAR 9.503. All of the changes are considered editorial.

EFFECTIVE DATE: April 21, 1989.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The changes being made by this Notice are not considered significant rules subject to FAR 1.301 or Subpart 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85-7. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 701, 704, 709, 725, 728, and 752

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 701, 704, 709, 725, 728, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

701.105 [Amended]

2. Paragraph (a) of section 701.105, OMB approval under the Paperwork Reduction Act, is amended to change the Expiration Data for AIDAR Segment 733.7003(c) from "12/31/88" to "12/31/90".

PART 704—ADMINISTRATIVE MATTERS

Subpart 704.4—Safeguarding Classified Information Within Industry

704.405 [Redesignated as 704.404]

3. Section 704.405, Contract clause, is redesignated as 704.404.

PART 709—CONTRACTOR QUALIFICATIONS

4. A new Subpart 709.5 consisting of section 709.503 is added as follows:

Subpart 709.5—Organizational Conflicts of Interest

709.503 Waiver.

For purposes of approving waivers or redelegating the authority to approve waivers pursuant to FAR 9.503, the A.I.D. Procurement Executive is the Agency head (see AIDR 702.170-13(c)(4). The Procurement Executive had redelegated the authority to approve waivers pursuant to FAR 9.503 to the heads of contracting acitivites in A.I.D., as defined in AIDAR 702.170-10.

PART 725—FOREIGN ACQUISITION

Subpart 725.2 [Removed]

5. Subpart 725.2—Buy American Act—Construction Materials is removed.

PART 728—BONDS AND INSURANCE

Subpart 728.3—Insurance

728.305-70 [Amended]

6. Section 728.305-70, Overseas worker's compensation and war-hazard insurance—waivers and A.I.D. insurance coverage, is amended by removing the ninth and tenth sentences (starting with the words "Copies of A.I.D. secured . . ." and ending ". . . A.I.D. secured waivers.") of paragraph (a), and by revising the first sentence of paragraph (a)(2) to read:

(a) * * *

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

752.225-9 [Amended]

7. Section 752.225-9, Buy American Act—Trade Agreements Act—Balance of Payments Program, is amended to change the reference to "subsection 752.7005 ", replacing it with a reference to "section 752.7004."

8. Section 752.228-3, Worker's Compensation Insurance (Defense Base Act), is amended by designating the paragraphs in the clause as (a), (b) and (c) respectively and revising newly designated (a) and (b) to read as follows:

752.228-3 Worker's Compensation Insurance (Defense Base Act).

* * * * *

(a) The Contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between A.I.D. and A.I.D.'s DBA insurance carrier unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA.

(b) If A.I.D. or the Contractor has secured a waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, the Contactor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits. The list of countries for which A.I.D. has secured waiver of DBA coverage is shown in AIDAR 728.305-70(a)(2) (48 CFR 728.305-70(a)(2)).

* * * * *

752.228-7 [Amended]

9. Section 752.228-7, Insurance—Liability to Third Persons is amended by removing the reference to "728.307-2(b)" appearing in the first sentence of the section, replacing it with a reference to "728.307-2(c)".

Subpart 752.70—Texts of A.I.D. Contract Clauses

10. The contract clause in section 752.7004, source and nationality requirements, is amended by revising the clause title and date and paragraph (g) of the clause as follows:

752.7004 Source and Nationality Requirements.

* * * * *

Source and Nationality Requirements (APR 1989)

* * * * *

(g) *Ineligible suppliers.* Funds provided under this contract shall not be used to procure any commodity or commodity-related service from any supplier who is debarred or suspended pursuant to the procedures in 22 CFR Part 208—Government-wide Debarment and Suspension (Nonprocurement).

752.7026 [Amended]

11. Paragraph (a) of section 752.7026, Reports, is amended by revising the introductory sentence following "(a) *Alternate 70.*" as follows:

* * * * *

For use in all A.I.D.-direct contracts for technical services except fixed-price contracts; for fixed-price contracts for technical services see paragraph (b), *Alternate 72,* of this section.

Date: April 11, 1989.

John F. Owens,

Procurement Executive.

[FR Doc. 89-9610 Filed 4-20-89; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 650

[Docket No. 90499-9099]

Atlantic Sea Scallop Fishery

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

ACTION: Notice of control date for entry into the Atlantic Sea Scallop Fishery.

SUMMARY: This notice announces that anyone entering the Atlantic sea scallop fishery after March 2, 1989 (control date), will not be assured of future access to the scallop resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Atlantic sea scallop resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation, while discussions continue on whether and how access to the scallop resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall (Executive Director, New England Fishery Management Council), 617-231-0422 or Patricia Kurkul, Northeast Region, National Marine Fisheries Service (508-281-9331).

SUPPLEMENTARY INFORMATION: Six proposals to amend the Fishery Management Plan for Atlantic Sea Scallops were taken to informational hearings in February and March by the New England Fishery Management Council (Council). Five hearings were held from Maine through North Carolina. Several of the proposals included provisions for establishment of a moratorium on vessels entering the fishery, and other fishing effort control measures.

After reviewing comments from the hearings and discussing the matter at its March 2, 1989 meeting, the Council voted to establish and publish the earliest possible control date which may be used for evaluating "historic participation" in the fishery, in the event that a moratorium is established or limited entry is used as a management measure. Accordingly, persons who enter the fishery after March 2, 1989, are not assured of future participation, should the Council develop, and the Secretary of Commerce implement, an access management regime that limits the number of participants in the scallop fishery.

In specifying the control date, the Council is acting in response to reports of an expanding number of fishery vessels entering the Atlantic sea scallop fleet, and the inability of the resource to support significantly increased effort.

Initial estimates of catch composition and the historical experience of regular fluctuations in resource abundance suggest an impending decline in the available scallop stocks. The Council concluded that the vessels active in the fishery at this time have sufficient capacity, if not an overcapacity, to harvest the available yield of the sea scallop stocks. The Council has decided that the establishment of an access management program for the fishery should be considered.

The Council's intent in making this announcement is to discourage speculative entry into the sea scallop fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish bona fide established fishermen from the speculative entrants to the fishery. Although fishermen are notified that entering the fishery after the control date will not assure them of future access to the sea scallop fishery on the grounds of previous participation, other qualifying criteria also may be applied for entry.

This announcement hereby establishes March 2, 1989, for potential use in determining historical or traditional participation in the sea scallop fishery. The action does not commit the Council to develop any particular management regime or any specific criteria for determining entry to the sea scallop fishery. Fishermen are not guaranteed future participation in the sea scallop fishery, regardless of their date of entry or intensity of participation in the fishery before or after the control date.

The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson Act.

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

Dated: April 18, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-9643 Filed 4-18-89; 4:02 pm]

BILLING CODE 3510-22-M

50 CFR Parts 204 and 658

[Docket No. 80990-9088]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Final rule and notice of OMB control number.

SUMMARY: NOAA issues this final rule to amend the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to (1) modify, temporarily, the boundary of the Tortugas shrimp sanctuary to reduce the area closed to trawl fishing, and (2)

require a report of the incidental take of any threatened or endangered sea turtle in the opened part of the Tortugas shrimp sanctuary. This action will enable fishermen to harvest marketable-sized shrimp from a small area that otherwise would be closed to shrimp trawling and will provide adequate protection to sea turtles, as required by the Endangered Species Act (ESA). This rule also informs the public of the approval by the Office of Management and Budget (OMB) of the information collection request (ICR) contained in this rule and publishes the OMB control number for that ICR.

EFFECTIVE DATE: May 22, 1989, through November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR Part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at § 658.22 after (1) consultation with the Gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The primary purpose of establishing the sanctuary was to protect small shrimp and allow them to attain a larger, more valuable size prior to harvest. The FMP stipulates that, prior to any modification of the sanctuary, NMFS will monitor and assess the impacts of the closure and advise the Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings.

When the sanctuary was partially opened in 1983–1984, NMFS determined that harvestable populations of shrimp occur periodically within a small portion of the sanctuary—a fact strongly supported by public testimony. Fishermen contend that shrimp from within this portion of the sanctuary emigrate to untrawlable areas and are unavailable to the fishery. Poor recruitment of shrimp to the Tortugas fishery has resulted in 2 consecutive years of poor production and economic loss to the adjacent shrimp ports. As identified in the FMP, poor recruitment in the unique shrimp fishery is more a function of environmental forces than of overfishing. Opening the area of the sanctuary containing all sizes of shrimp is consistent with optimum yield because it will allow shrimpers to obtain, on a temporary basis, a more valuable catch per unit of effort.

Thus, the Regional Director, after consulting with the Council and considering the criteria for modifying the sanctuary, has determined that the small portion (approximately 54 square nautical miles) of the sanctuary that periodically contains harvestable shrimp should be opened for 1 year. This area is less than 10 percent of the total geographical scope of the sanctuary and such modification will increase the benefits to fishermen by optimizing the yield of shrimp. This temporary geographic modification is consistent with Objective 1 of the FMP because it provides temporary economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

To maximize the intended economic benefits of this action, it was necessary to make the geographic modification as soon as possible after November 1, 1988. November 1 marks the onset of the six-month period when peak landings occur. Accordingly, NOAA published an emergency final rule on November 9, 1988 (53 FR 45270), that implemented the geographic modification for 90 days (November 4, 1988 through February 2, 1989). During this period NOAA expected to (1) publish the proposed rule to extend the period of the boundary modification so as to provide a total period of one year and to require a report of incidental catch of sea turtles in the opened portion of the shrimp sanctuary, (2) receive public comments on the proposed rule, (3) obtain approval from the Office of Management and Budget (OMB) on the reporting requirement of the proposed rule, and (4) publish this final rule. These actions were not completed by February 2, 1989, and the Tortugas shrimp sanctuary reverted to its normal boundaries after that date.

This final rule modifies the boundary of the Tortugas shrimp sanctuary to reduce the area closed to trawl fishing and requires a report of the incidental take of any threatened or endangered sea turtle in the opened part of the sanctuary, effective from May 22, 1989 through November 3, 1989. The opened part of the sanctuary under this rule is the same as was opened under the emergency final rule.

Analysis of the impacts of the boundary modification, including its impact on endangered species, was included in the proposed rule (54 FR 2175, January 19, 1989) and is not reported here.

Comments and Responses

Seven written responses were received commenting on (1) temporarily modifying until November 3, 1989, the boundary of the Tortugas shrimp sanctuary to reduce the area closed to trawl fishing, and (2) requiring a report of the incidental take of any threatened or endangered sea turtle in the open area of the Tortugas shrimp sanctuary.

1. Temporary Modification of the Boundary of the Tortugas Shrimp Sanctuary Until November 3, 1989

One comment from a seafood dealer was received supporting the extension because the economic conditions that existed when the boundary modification was implemented on November 4, 1988, continue to exist. The commenter also noted that an interruption of the boundary modification would leave many questions unanswered. Thirty-one spiny lobster and stone crab fishermen opposed this action because they deployed traps in portions of the 54-square mile open area. Fixed trap gear cannot be safely deployed in an area fished with mobile, trawl gear. These fishermen contended that opening this area of the Tortugas shrimp sanctuary created the conditions for fishermen using trawl gear to inadvertently destroy about 6,500 spiny lobster and stone crab pots.

Comments from the Center for Marine Conservation, a professor from a sea grant college, and three individuals objected to opening the 54-square mile area of this sanctuary without concurrent requirements for the use of Turtle Excluder Devices (TEDs). These commenters were concerned about the shrimp fleets incidental, inadvertent catch and kill of endangered and threatened sea turtles.

NOAA has decided to extend the temporary modification of the Tortugas shrimp sanctuary until November 3, 1989. The risk of further conflict between fishermen using fixed and trawl gear is minimal because most of the trap loss occurred soon after the area was opened. Also, the spiny lobster season ends on March 31, 1989. The stone crab season ends May 15 but most stone crab fishing ends well before that time. All spiny lobster gear must be removed at the end of the season and most fishermen remove their stone crab pots about the same time due to unprofitable catch rates during the last two months of the season. In any case, this final rule gives ample notice to fishermen to remove fixed gear from the opened portion of the sanctuary.

NOAA does not agree with requiring the use of TEDs in the open area of the sanctuary. As was indicated in the emergency rule, the implementation of regulations that require the use of TEDs and other conservation measures in the ocean area around the Tortugas shrimp sanctuary, and elsewhere, was delayed by Congress until May 1, 1989. At that time, the regulations will become effective for the opened portion of the Tortugas shrimp sanctuary as well. NOAA remains convinced of the benefits of properly used TEDs to the conservation of endangered and threatened sea turtles. However, the required use of TEDs in the 54-square mile area of the sanctuary before their required use in adjacent areas would be unnecessarily cumbersome, difficult to enforce, counterproductive to orderly implementation of the more general requirements for TEDs and other conservation measures, and contrary to the present Congressional mandate.

2. Reporting Incidental Catches of Sea Turtles and Following Resuscitation Techniques and Release Procedures

One comment from a seafood dealer was received in support of reporting the incidental catch of sea turtles and requiring resuscitation of comatose turtles. One commenter from a sea grant college objected to requiring sea turtle catch reports, resuscitation procedures, and release techniques as mitigation measures instead of requiring the use of TEDs in the 54-square mile open area. NOAA views the mitigation measures included in this rule as adequate until the more general requirements for TEDs and other conservation measures become effective in this area.

Changes From the Proposed Rule

In the reporting requirement for the incidental take of a threatened or endangered sea turtle in the opened portion of the sanctuary (§ 658.5(c)), the availability of reporting forms, sea turtle identification guides, and resuscitation techniques has been added as a convenience to fishermen.

Classification

The Assistant Adminstrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities because the geographical area affected by the rule is small and, as a result, the number of fishermen affected in the Gulf-wide and Florida-wide fisheries would not be substantial. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared a regulatory impact review (RIR) for this rule. Based on the RIR, the Under Secretary for Oceans and Atmosphere, NOAA, determined that the rule is not major under E.O. 12291 because it would not have an annual effect on the economy of $100 million or more; would not result in an increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an environmental assessment (EA) for this rule and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been approved by the Office of Management and Budget under OMB Control Number 0648–0219. Public reporting burden for this collection of information is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Michael E. Justen, Southeast Region, NMFS, and to the Office of Information and Regulatory Affairs, OMB (See **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida. This determination was submitted for review by Florida under Section 307 of the Coastal Zone Management Act. Florida failed to comment within the statutory time period and concurrence is therefore implied.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated April 13, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Parts 204 and 658 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the left hand column, in numerical order, "§ 658.5(c)" and adding in the right hand column, in a corresponding position, "–0219", effective from May 22, 1989, through November 3, 1989.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO [AMENDED]

3. The authority citation for Part 658 continues to read as follows:

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

4. In § 658.5, a new paragraph (c) is added, effective from May 22, 1989, through November 3, 1989, to read as follows:

§ 658.5 Reporting requirements.

* * * * *

(c) *Tortugas shrimp sanctuary.* (1) The owner or operator of any fishing vessel that fishes for or lands shrimp or any part thereof in or from that part of the Tortugas shrimp sanctuary described at § 658.22(b) of this part, and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any such taking to the Director, Galveston Laboratory, NMFS, 4700 Avenue U, Galveston, TX 77550, 409–766–3500, within 24 hours after landing.

(i) Date;

(ii) Shrimp vessel name;

(iii) Species of turtle caught:

(A) Loggerhead;

(B) Kemp's ridley; or

(C) Other (specify, see turtle identification guide);

(iv) Status of turtle when released:

(A) Alive; or

(B) Dead;
(v) Whether the turtle had a tag;
(vi) If so, the tag number;
(vii) Coordinates of capture (loran readings or latitude and longitude);
(viii) Approximate tow time; and
(ix) Additional comments.
(2) Reporting forms, sea turtle identification guides, and resuscitation techniques may be requested from the Director, Galveston Laboratory.

5. In § 658.22, effective from May 22, 1989, through November 3, 1989, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding, effective from November 4, 1988, through November 3, 1989, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point F at 24°50.7′ N. latitude, 81°51.3′ W. longitude to point Q at 24°46.7′ N. latitude, 81°52.2′ W. longitude (the intersection of the extension of the sanctuary boundary line from point N to point F (in a direction of 191° from true north) and the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition (March 21, 1987) of NOAA chart 11439, to point R at 24°44.7′ N. latitude, 82°10.0′ W. longitude; thence north to point S at 24°45.1′ N. latitude, 82°10.0′ W. longitude (the intersection of 82°10.0′ W. longitude and the sanctuary boundary line from point F to point G) (see Figure 1).

[FR Doc. 89-9644 Filed 4-20-89; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the Eastern Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting further retention of sablefish by longline vessels fishing in this area from 12:00 noon, Alaska Daylight Time (a.d.t.), on April 17, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, a.d.t., on April 17, 1989, until midnight, Alaska Standard Time, December 31, 1989. Public comments on this notice of closure may be submitted to the Regional Director at the address below by May 2, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, or Ellen Rose Varosi, Fishery Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all ground fish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) of current regulations restricts the hook-and-line catch of sablefish in the Eastern Regulatory Area to 95 percent of the TAC. The Eastern Regulatory Area is divided into three districts, the West Yakutat District and the combined Southeast Outside and East Yakutat Districts (SE/EYT). The 1989 TACs specified for sablefish in these districts are 4,550 mt in the West Yakutat District and 5,980 mt in the combined SE/EYT Districts (54 FR 6524, February 13, 1989); the portion of the TAC allocated to hook-and-line gear in these districts are 4,320 mt and 5,680 mt, respectively. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The directed hook-and-line fishery for sablefish started April 1, 1989. The Regional Director reports that vessels using hook-and-line gear have landed 2,369 mt of sablefish through April 12 in the West Yakutat District. The longline fleet in this district has averaged a daily sablefish landing of 301.7 mt per day. At this rate, the balance of the 4,320 mt allocated to these vessels will be harvested by 12:00 noon, a.d.t., April 17, 1989.

The Regional Director further reports that the longline fleet fishing in the SE/EYT Districts has landed 3,325 mt of sablefish through April 11, 1989, and has averaged a daily landing of 369 mt per day. At this rate, the balance of the 5,680 mt allocated to these vessels will also be harvested by 12:00 noon, a.d.t., April 17, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with hook-and-line gear in the West Yakutat District and combined SE/EYT Districts effective 12:00 noon, a.d.t., April 17, 1989. Any sablefish caught with hook-and-line gear after that date must be treated as prohibited species and discarded at sea. The Secretary has already prohibited retention of sablefish caught with trawl gear in the West Yakutat District on April 12, 1989. Overharvesting of sablefish will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

If written comments are received which oppose or protest this action, the Secretary will reconsider its necessity and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or that modifies or rescinds the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 17, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-9565 Filed 4-17-89; 4:52 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 76
Friday, April 21, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-08-AD]

Airworthiness Directives; Cessna Model 180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FAA is considering issuing an Airworthiness Directive (AD) applicable to certain Cessna Model 180 airplanes to correct a problem involving undetected fuel loss. Evidence indicates that those airplanes equipped with an over wing (above cabin top) fuel vent mast may be susceptible to fuel syphoning due to ice blockage of the fuel vent mast inlet. Since possible alternative actions may be directed toward either the airplane or the operator, the agency is seeking comments from interested persons regarding the feasibility of requiring corrective action similar to that already voluntarily taken by some owners or operators.

DATES: Comments must be received on or before June 21, 1989.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-08-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, FAA, ACE-140W, Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Invitation for Comments

This Advance Notice of Proposed Rulemaking is being issued in accordance with the FAA's policy for the early institution of public rulemaking proceedings. An "advance" notice is issued when it is found that the resources of the FAA and reasonable inquiry outside of the agency do not yield a sufficient basis to identify and select a tentative or alternate courses of action, or where it would be helpful to invite public participation in the identification and selection of a course or alternative courses of action with respect to a particular rulemaking problem. The subject matter of this notice involves a situation contemplated by that policy.

Interested persons are invited to participate in the formulation of the FAA action by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications received on or before the date specified above will be considered before taking additional action. All comments will be available, both before and after the closing date for comments, in the Office of the Assistant Chief Counsel, Central Region, FAA, for examination by interested persons. If it is determined to be in the public interest to proceed with regulatory action, after consideration of the available data and comments, a Notice of Proposed Rulemaking will be issued.

Scope of Problem

Cessna manufactured the Model 170 Series, some early Models 172 and 180, as well as all 190/195 Series airplanes with an over the wing (above the cabin top) fuel tank vent mast. Reports have been received which indicate that the Model 180 airplane may be susceptible to fuel syphoning due to ice blockage of the over wing fuel vent mast. Operators of Cessna Model 180 airplanes still in service with over the wing fuel vents have recently reported a higher than usual number of fuel syphoning problems.

Cessna manufactured 2,486 Model 180 series airplanes from 1953 thru 1955 with an over wing fuel tank vent. These vents were subsequently determined to be susceptible to ice accretion. Ice blocking the fuel vent mast inlet results in fuel being syphoned out the alternate vent opening on the aft side of the fuel vent mast. In the mid 1956 model year production, the Model 180 fuel tank vent was relocated behind the left wing lift strut. This is the only vent location used through the most recent production of the light single engine series airplanes. However, in 1963 the Cessna 180 Series had an additional identical vent added behind the right wing lift strut. Dual primary fuel vents were utilized on all Cessna 180 Series airplanes manufactured from 1963 through the most recent production.

Some of the Cessna Model 180 airplanes manufactured with the single over wing fuel vent were later equipped with Cessna service kits to relocate the vent behind the left wing strut. During 1956, Cessna offered their Service Kit SK 180-6 which consisted of an exchange program to provide fuel tanks capable of accommodating the under wing vent for the early Model 180 airplanes. Subsequently, in 1959, Cessna offered their Service Kit SK 180-17A which provided instructions and hardware to relocate the over wing fuel vent mast to the under wing vent location. The Cessna vent relocation kits were discontinued several years ago. The Cessna Aircraft Company has advised the FAA that it is not practical to make the Cessna vent relocation kits available at this time.

There have been reports of incidents and accidents that were initiated by ice blockage of the over wing fuel vent mast followed by fuel loss due to syphoning of fuel out of the fuel vent mast alternate vent opening. The FAA has determined that there may be a valid need to provide all remaining early Cessna Model 180 airplanes (approximately 1,000) with under wing fuel tank vent(s). However, the FAA believes that there may be more cost effective methods available to equip the early Cessna Model 180 airplanes with under wing fuel vent(s). Therefore, this proposal is being offered as an Advance Notice of Proposed Rulemaking in an attempt to determine if a feasible course of action is (or can be made) available to correct the potential fuel syphoning problem on those Cessna Model 180 airplanes still equipped with an over wing fuel vent mast.

Topics of Inquiry

The FAA believes that previous actions taken by Cessna in changing the fuel vent location and providing retrofit kits, which were voluntarily installed by some operators over 30 years ago, have reduced the probability of undetected fuel loss due to in-flight fuel syphoning on Cessna Model 180 airplanes. However, since this problem is now being reported with increased frequency, the FAA is considering the necessity for additional rulemaking or some other action which would improve the probability that the pilot would detect in-flight fuel loss or that fuel syphoning would not occur when the over wing fuel vent mast becomes obstructed by ice or some other foreign matter. In this regard, the FAA is especially interested in field comments and viewpoints on the following:

(a) Has erroneous fuel gaging and/or fuel syphoning with an over wing fuel vent configured Cessna Model 180 airplane been experienced?

(b) Has engine power interruption due to fuel flow problems on Cessna Model 180 airplanes configured with an over wing fuel vent been experienced when encountering an inadvertent icing condition?

(c) Are there field approved modifications, other than those produced by the Cessna Aircraft Company for the Cessna Model 180 airplanes originally configured with the over wing fuel vent?

(d) If the response to this advance notice indicates that action to increase the level of safety in the operation of the airplanes is warranted, which of the following actions would be most effective:

(1) Modification of existing, or installation of additional, primary fuel tank vents?

(2) Requiring an Airplane Flight Manual Supplement with special fuel system operating procedures and limitations?

(e) Would additional non-regulatory action by the FAA, such as increased emphasis on this problem in our accident prevention programs and during biennial flight reviews, raise the pilots' awareness of this problem and cause them to operate so that they would detect fuel syphoning?

(f) Are there some suggestions, other than those addressed above, for reducing the possibility of accidents involving these airplanes resulting from undetected fuel syphoning while operating in possible icing conditions?

This ANPRM is published pursuant to 49 U.S.C. 1354(a).

Issued in Kansas City, Missouri, on March 31, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-9593 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 109 and 509

[Docket No. 88N-0006]

RIN 0905-AC73

Action Levels for Added Poisonous or Deleterious Substances in Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to (1) amend its regulations creating and describing action levels to make it clear that action levels, as defined in the proposal, constitute prosecutorial guidance rather than substantive rules, and (2) revoke the provisions of regulations providing for exceptions to action levels in 21 CFR Parts 109 (human food) and 509 (animal feed), because of a court decision that relied on those regulations in determining that the action levels were substantive rules.

DATE: Comments by June 20, 1989.

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

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Contaminants Policy Staff (HFC-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: Beginning with the enactment of the Federal Food, Drug, and Cosmetic Act (the act) in 1938 (21 U.S.C. 301 *et seq.*), and continuing through most of 1987, FDA regulated the presence in food and feed of unavoidable added poisonous or deleterious substances, such as aflatoxins in corn, principally by using what the agency viewed as general statements of policy—publicly available prosecutorial guidelines—that it termed "action levels." These action levels announced the amount of a particular added contaminant that FDA regarded as resulting in adulteration under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)). That section provides that a food is adulterated if it bears or contains an added poisonous or deleterious substance that "may render (the food) injurious to health." In *Young* v. *CNI*, 106 S. Ct. 2360 (1986), reversing *CNI* v. *Young* 757 F.2d 354 (D.C. Cir. 1985), the Supreme Court decided that FDA has the discretion to regulate such substances either by (1) exercising its prosecutorial discretion to recommend court proceedings under section 402(a)(1) of the act, guided by informal action levels, or (2) issuing tolerances by formal rulemaking under sections 406 and 701(e) of the act (21 U.S.C. 346 and 371(e)). The Supreme Court found that the question whether action levels must be promulgated by notice and comment (informal) rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553) was not before it (106 S. Ct. at 2364), and therefore remanded the case to the U.S. Court of Appeals for the District of Columbia Circuit for decision on that issue.

On May 15, 1987, the D.C. Circuit held that FDA action levels are legislative rules rather than general statements of policy within the meaning of the APA (5 U.S.C. 551(5)) and, therefore, must be promulgated in accordance with the notice and comment procedures of that statute (*CNI* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987)). Because FDA's action levels were issued without such procedures, the court found the action levels to be "invalid." *Id.* at 950.

On June 29, 1987, the government filed a petition for rehearing with suggestion for rehearing *en banc* in the case. On October 15, 1987, the circuit court denied the *en banc* suggestion without dissent. On the same date, the petition for panel rehearing was denied. The government did not seek *certiorari*.

In the **Federal Register** of February 19, 1988 (53 FR 5043), in response to the circuit court's decision, FDA issued a notice stating that its current action levels are not binding on the courts, the public (including food producers), or the agency (including individual FDA employees), and that the action levels do not have the "force of law" of substantive rules. The notice said that if a food bears or contains an unavoidable added poisonous or deleterious substance in an amount below the action level for that substance, FDA is not precluded from recommending to the Department of Justice (see 21 U.S.C. 337; *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 598-99 (1950)) that court enforcement action be instituted against the food or the persons responsible for its shipment, and the government is not barred from bringing such an action. Action levels do not create a legal

immunity from prosecution for food producers, nor do action levels grant to food producers a legal privilege to ship in interstate commerce food with added contaminants up to the applicable action levels. At the same time, as stated in the notice, if a food bears or contains an unavoidable poisonous or deleterious substance in an amount in excess of the action level for that substance, FDA is not required to recommend court proceedings, and the government is not required to bring such proceedings. Whether FDA will recommend, and the government will institute, seizure, injunction, or prosecution in a given case will depend on the extent of the contamination, the strength of the evidence of adulteration within the meaning of section 402(a)(1) of the act, the risk to health presented by the unavoidable added poisonous or deleterious substance, the amount of food involved, and other factors.

In the February 19, 1988, notice, FDA also stated that it would publish a proposed rule to (1) amend its regulations creating and describing action levels to make it clear that action levels constitute prosecutorial guidance rather than substantive rules, and (2) revoke the provisions of the regulations providing for exemptions to action levels in 21 CFR Parts 109 (human food) and 509 (animal feed), because the circuit court relied on those regulations and provisions in determining that the action levels were substantive rules. *CNI* v. *Young*, 818 F.2d at 847, quoting 21 CFR 109.4, 109.6(c), and 109.8(a).

FDA is proposing to amend 21 CFR 109.4(b)(1) and 21 CFR 509.4(b)(1) by providing that an action level define a level of contamination at which the agency may regard a food as adulterated. An action level would no longer be defined as "the level of contamination at which a food will be deemed to be adulterated." FDA is also proposing to amend § 109.4(b)(1) § 509.4(b)(1) be deleting the last sentence, which provides that "an action level may prohibit any detectable amount of the substance in food." These proposed amendments are intended to make it clear that action levels do not have a present effect and are not binding.

FDA is proposing to amend § 109.4(b)(2) and § 509.4(b)(2) by deleting the following sentences:

> Regulatory action may be taken at any time after an action level is established, and need not await publication of the notice. An action level may be changed at any time if the protection of the public health so requires.

The agency is proposing to delete these sentences because they suggested that action levels are binding and because they attach to action levels a degree of formality that is neither necessary nor appropriate. As indicated in the February 19, 1988, notice, action levels are merely prosecutorial guidelines. Regulatory action may therefore be taken whether or not an action level has been established, and an action level may be changed for any appropriate reason.

FDA is proposing to amend § 109.6(c) and § 509.6(c) in two respects. First, consistent with the proposed amendments to § 109.4(b) (1) and (2) and § 509.4(b) (1) and (2), discussed above, the agency is proposing to delete from the second sentence of § 109.6(c) and § 509.6(c) the phrase "shall cease to be enforced and," because that phrase suggests that action levels have a present effect and are binding. Second, FDA is proposing to amend the first sentence of § 109.6(c) and § 509.6(c) to provide that an action level for an added poisonous or deleterious substance in a food (or feed) may be established at a level at which FDA may regard the food (or feed) as adulterated within the meaning of section 402(a)(1) of the act, without regard to the criteria in section 406 of the act or § 109.6 or § 509.6 of the agency's regulations. FDA has established action levels in the past to aid in enforcing section 402(a)(1) of the act, and the agency is proposing to reflect that practice in its regulations.

FDA is not proposing at this time any other amendments to § 109.6 or § 509.6. The agency emphasizes, however, that an action level established using the criteria in current § 109.6 or § 509.6 is not the functional equivalent of a tolerance established by formal rulemaking under sections 406 and 701(e) of the act. The administrative standard represented by an action level as opposed to such a tolerance is entirely different in legal effect, for an action level does not bind the courts, the public (including food producers), or FDA (including individual agency employees).

Finally, FDA is proposing to delete § 109.8 and § 509.8 in their entirety. These provisions provided for exemptions to action levels and, in the circuit court's view, confirmed that action levels were "presently binding norm[s]." *CNI* v. *Young*, 818 F.2d at 847. The agency emphasizes, however, that notwithstanding any deletion of § 109.8 and § 509.8, FDA "enjoys complete discretion not to employ the enforcement provisions" of the act. *CNI* v. *Young*, 818 F.2d at 950, citing *Heckler* v. *Chaney*, 470 U.S. 821 (1985). Those "provisions authorize, but do not compel, FDA to undertake enforcement activity; they 'commit complete discretion to [FDA] to decide how and when they should be exercised.' " *Schering Corp.* v. *Hekcler* 779 F.2d 683, 686 (D.C. Cir. 1985), quoting *Heckler* v. *Chaney*, 470 U.S. at 835.

FDA notes that if it were to establish, by notice-and-comment rulemaking under sections 402(a)(1) and 701(a) of the act (21 U.S.C. 342(a)(1) and 371(a)), levels of added poisonous and deleterious substances in food that may render the food injurious to health, those levels would be binding on the courts, the public (including food producers), and the agency (including individual FDA employees). If the agency establishes such levels, it will call them regulatory limits, to eliminate the possibility of confusion over the legal effect of action levels, as defined in this proposal, and binding regulatory limits promulgated by informal rulemaking under sections 402(a)(1) and 701(a) of the act.

Environmental Impact

FDA has determined that this action is of a type that is categorically excluded under § 25.24(a)(8) of the agency's regulations governing environmental impact considerations (21 CFR 25.24(a)(8)). Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency finds that the proposed rule is not a major rule because the revisions proposed would not result in any increase in cost (significant or otherwise) to the public (including food producers). The proposal would amend the agency's regulations creating and describing action levels for added poisonous or deleterious substances, such as aflatoxins in corn, to make it clear that action levels constitute prosecutorial guidance rather than substantive rules. The agency is also proposing to revoke the provisions of the regulations providing for exceptions to action levels since there would be no need to provide for an exception to an action level that does not bind the courts, the public (including food producers), or the agency (including individual agency employees). Thus, the proposal creates no new requirements for food producers. For these reasons, therefore, the agency has determined that the proposed rule is

not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Request for Comments

Interested persons may, on or before June 20, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 109

Food packaging, Foods, Polychlorinated biphenyls (PBC's).

21 CFR Part 509

Animal foods, Packaging and containers, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 109 and 509 be amended as follows:

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

1. The authority citation for 21 CFR Part 109 continues to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 701, 52 Stat. 1045–1046 as amended, 1049 as amended, 1055–1056 as amended, 68 Stat. 411–518 as amended, 72 Stat. 1785–1788 as amended (21 U.S.C. 336, 342(a), 346, 346a, 348, 371).

2. Section 109.4 is amended by revising paragraphs (b) (1) and (2) to read as follows:

§ 109.4 Establishment of regulations.

* * * * *

(b)(1) When appropriate under the criteria of § 109.6, an action level for an added posionous or deleterious substance, which may be a food additive, may be established to define a level of contamination at which a food may be regarded as adulterated.

(2) Whenever an action level is established or changed, a notice shall be published in the **Federal Register** as soon as practicable thereafter. The notice shall call attention to the material supporting the action level which shall be on file with the Dockets Management Branch before the notice is published. The notice shall invite public comment on the action level.

* * * * *

3. Section 109.6 is amended by revising paragraph (c) to read as follows:

§ 109.6 Added poisonous or deleterious substances.

* * * * *

(c) An action level for an added poisonous or deleterious substance in any food may be established when the criteria in paragraph (b) of this section are met, except that technological or other changes that might affect the appropriateness of the tolerance are foreseeable in the near future. An action level for an added poisonous or deleterious substance in any food may also be established at a level at which the Food and Drug Administration may regard the food as adulterated within the meaning of section 402(a)(1) of the act, without regard to the criteria in paragraph (b) of this section or in section 406 of the act. An action level shall be revoked when a tolerance for the same substance and use has been established.

* * * * *

§ 109.8 [Removed]

4. Section 109.8 *Exemptions* is removed from Subpart A.

PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIAL

5. The authority citation for 21 CFR Part 509 continues to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 701; 52 Stat. 1045–1046 as amended, 1049 as amended, 1055–1056 as amended; 68 Stat. 511–518 as amended; 72 Stat. 1785–1788 as amended (21 U.S.C. 336, 342(a), 346, 346a, 348, 371).

6. Section 509.4 is amended by revising paragraphs (b) (1) and (2) to read as follows:

§ 509.4 Establishment of regulations.

* * * * *

(b)(1) When appropriate under the criteria of § 509.6, an action level for an added poisonous or deleterious substance, which may be a food additive, may be established to define a level of contamination at which a food may be regarded as adulterated.

(2) Whenever an action level is established or changed, a notice shall be published in the **Federal Register** as soon as practicable thereafter. The notice shall call attention to the material supporting the action level which shall be on file with the Dockets Management Branch before the notice is published. The notice shall invite public comment on the action level.

* * * * *

7. Section 509.6 is amended by revising paragraph (c) to read as follows:

§ 509.6 Added poisonous or deleterious substances.

* * * * *

(c) An action level for an added poisonous or deleterious substance in any food may be established when the criteria in paragraph (b) of this section are met, except that technological or other changes that might affect the appropriateness of the tolerance are foreseeable in the near future. An action level for an added poisonous or deleterious substance in any food may also be established at a level at which the Food and Drug Administration may regard the food as adulterated within the meaning of section 402(a)(1) of the act, without regard to the criteria in paragraph (b) of this section or in section 406 of the act. An action level shall be revoked when a tolerance for the same substance and use has been established.

* * * * *

§ 509.8 [Removed]

8. Section 509.8 *Exemptions* is removed from Subpart A.

Dated: April 3, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-9580 Filed 4-20-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1305

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances and Order Forms

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations concerning the storage of potent animal immobilizing agents to include a recently controlled substance subject to this classification.

DATE: Comments or objections must be received by May 22, 1989.

ADDRESS: Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, ATTN: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: This action come after the final rule placing carfentanil, a narcotic substance, into Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). Carfentanil is a rapidly acting and extremely potent synthetic compound that is an analog of the opiate fentanyl. The drug is estimated to be several thousand times as potent as morphine. The approved use of carfentanil is in veterinary medicine for immobilizing free ranging or confined members of the family Cervidae (deer, elk, moose), as outlined in **Federal Register** Notice 40056 dated October 13, 1988.

Because of the potency of carfentanil and the potential hazard this drug poses to humans, DEA proposes that the additional security and record-keeping requirements currently required for etorphine hydrochloride and diprenorphine also apply to carfentanil. These requirements would entail the following: (a) Manufacturer/distributor registrants would verify (prior to shipment) that a customer is registered and approved to handle this drug by contacting the DEA; (b) the storage of carfentanil would be in a safe, steel cabinet equivalent to a U.S. Government Class V security container, or other security approved by the DEA; (c) the purchaser of carfentanil would be required to submit copies 1 and 2 of the DEA–222c order form to the supplier and retain copy 3 in his own files; (d) the supplier of carfentanil would maintain the DEA–222c order forms separately from other records; (e) DEA–222c order forms for carfentanil would only contain this one controlled substance in reasonable quantities; and (f) the substance would only be shipped to the purchaser at the location printed by the DEA upon the DEA–222c order form. Furthermore, the shipper would use substantial packaging material, with no markings present on the outside of the package, to indicate its content.

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to Sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget. This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby proposes that 21 CFR Part 1301 and 21 CFR Part 1305 be amended as follows:

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

21 CFR Part 1305

Drug Enforcement Administration, Drug traffic control, Reporting requirements.

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES [AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

§ 1301.74 [Amended]

2. 21 CFR 1301.74(g) is amended by inserting the word "carfentanil," before the words "etorphine hydrochloride".

§ 1301.75 [Amended]

3. 21 CFR 1301.75(d) is amended by inserting the word "Carfentanil," at the beginning of the sentence.

PART 1305—ORDER FORMS [AMENDED]

1. The authority citation for Part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b).

§ 1305.06 [Amended]

2. 21 CFR 1305.06(b) is amended by inserting the word "carfentanil," before the words "etorphine hydrochloride".

§ 1305.13 [Amended]

3. 21 CFR 1305.13(d) is amended by inserting the word "carfentanil," before the words "etorphine hydrochloride".

§ 1305.16 [Amended]

4. 21 CFR 1305.16(a) is amended by inserting the word "carfentanil," before the words "etorphine hydrochloride".

5. 21 CFR 1305.16(b)(1) is amended by inserting the word "carfentanil," before the words "etorphine hydrochloride".

Date: March 27, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–9562 Filed 4–20–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–301B]

RIN 1218–AA20

Concrete and Masonry Construction Safety Standards; Lift-Slab Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; Notice of informal public hearing.

SUMMARY: This notice schedules an informal public hearing concerning the notice of proposed rulemaking which OSHA issued on September 15, 1988 (53 FR 35972) on lift-slab construction.

DATES: The hearing will begin at 9:30 a.m. on June 29, 1989, in Washington, DC, and continue beyond that day as necessary. A tentative schedule of appearances will be prepared and distributed to parties who have submitted notices of intention to appear, so parties will know more specifically when issues which concern them are to be raised at the hearing.

Notices of intention to appear at the informal public hearing must be postmarked by May 22, 1989. Testimony and all evidence which will be offered into the hearing record must be postmarked by June 5, 1989.

ADDRESS: Four copies of the notice of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety

and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615

The hearing will be held in the Auditorium of the Frances Perkins Building U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615. For additional information on how to submit notices of intention to appear, see the section on public participation below.

Proposal and Hearing Issues: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION: On September 15, 1988, OSHA published a Notice of Proposed Rulemaking (NPRM) which proposed to revise the safety standards in 29 CFR Part 1926 for lift-slab construction (53 FR 35972). Interested persons were initially given until November 14, 1988, to comment on the proposal and to request a hearing.

The comment period and the time for requesting an informal public hearing has been extended twice, first to December 14, 1988, (53 FR 216), and then to February 12, 1989, (53 FR 239), both times at the request of Texstar Construction Corporation. OSHA received two requests for an informal public hearing—one on behalf of Texstar Construction Corporation and Continental Lift Slab Corporation (Ex. 38–15) and the other from Mr. Mario Suarez of Schupack Suarez Engineers, Inc. (Ex. 38–21). OSHA observes that Mr. Mario Suzrez is also listed as one of the witnesses to be presented by Texstar/Continental. Accordingly, pursuant to section 6(b)(3) of the OSH Act, OSHA has scheduled an informal public hearing to begin on June 29, 1989, to receive testimony and other information pertinent to the issues raised in the hearing requests and at OSHA's initiative.

Texstar Construction Corporation and Continental Lift Slab Construction (Ex. 38–15) in their hearing request noted their objections to five provisions on which they requested a hearing. Those provisions include the following:

(1) *Section 1926.705(a)* which requires lift-slab operations to be designed and planned by a qualified lift-slab designer and which requires the employer to implement the plans and designs.

Texstar/Continental believes that the provision should be modified to require lift-slab details to be reviewed and approved by the architect/engineer of record and incorporated into the structural drawings and that the drawings shall include details of erection and instruction regarding the prescribed lifting sequence. Texstar/Continental stated that their revised language will insure an adequate check and balance system between the contractor/employer and the design architect/engineer so as to insure a safe workplace for the employee.

(2) *Section 1926.705(d)* which prohibits overloading jacking equipment and which requires that threaded rods and other members which transmit loads to the jacks be capable of supporting at least two and one-half times the load to be applied.

Texstar/Continental object to "The unwarranted inclusion of shearheads, columns and footings in the 2.5 safety factor for the lifting equipment." They also requested a clarification of some of the lifting components identified by OSHA and requested that the term "lifting angle" be changed to "lifting attachment."

(3) *Section 1926.705(j)* which limits the number of manually conrolled jacks on one slab to a number that will permit the operator to maintain the slab level within specified tolerances.

Texstar/Continental suggests the provision be revised to read: "The maximum number of manually controlled jacks on one slab shall be limited to 14 jacks per console. If more than 14 jacks are used they should be divided as equally as possible among the two consoles. The consoles shall be attended by competent operators experience in this type of operation." Texstar/Continental noted that is was their opinion that it is necessary to limit the number of jacks to insure proper monitoring of the lifting rate and that "Exceeding the maximum of 14 jacks per console limits the ability of the operators to visually and physically control the console and the lifting process."

(4) *Section 1926.705(k)* which prohibits nonessential employees from being in buildings while jacking operations are in progress. Jacking operations begin when a slab or group of slabs is lifted and ends when such slabs are secured.

Texstar/Continental suggests the provision be amended to allow work to take place under slabs that have been secured even though jacking operations are in progress elsewhere in the structure. Specifically, they suggested the provision read as follows: "No work or personnel shall be permitted *directly underneath* [emphasis added] a slab during the time it is being lifted except for the placing of temporary or permanent connections." They also listed three tasks to be performed by essential personnel *while the slab is being lifted.* Texstar/Continental noted that prior to the L'Ambiance collapse, it was industry practice in the U.S. to work under slabs that had been secured even though other slabs were being lifted. They also noted that the economics of not allowing workers in the building during lifting would eliminate lift slab as a viable competitive system.

(5) *Section 1926.705(l)* requires that when making temporary connections to support slabs, wedges shall be secured by tack welding or an equivalent method of securing *before* the load is released from the lifting unit.

Texstar/Continental suggested the provision be changed to require tack welding *after* the load has been released from the lifting unit. Texstar/Continental noted that tack welding must be done after the load is released onto the wedges to insure the tack weld will not break due to the application of the load onto the wedge and to provide proper seating of the bearing surface.

Schupack Suarez Engineers, Inc. did not identify the provisions to which they objected.

In addition to the concerns raised above, OSHA solicits testimony, with supporting information, on the issues presented below.

Issue #1: Post–tensioning of Slabs

OSHA received a comment from a professional engineer, (Ex. 38–13A), who commented, "When constructing with the "lift-slab" method, the primary method of reinforcing concrete slabs *shall not be* by the use of *un-bonded* post-tensioning elements." The commenter suggested that OSHA Include the following provision in the final rule:

> If a *bonded* post-tensioning process is used, the post-tensioned elements shall all be fully bonded within the concrete slabs prior to lifting.

OSHA solicits information and evidence relative to the language proposed by the commenter.

Issue #2: Economic Effect

OSHA Has received comments from Texstar/Continental, the Associated General Contractors, and others that indicate a potential severe economic impact on at least one firm of the three

firms engaged in lift-slab construction as a result of the proposed regulations. In order to make a determination on this question, more information is needed on the cost differential between lift-slab construction and the degree to which this would shift under the proposed regulations. OSHA also requests additional data showing the comparative accident and injury rates for the same groups of workers for lift slab and other construction methods.

Public Participation

Notice of Intention to Appear

Persons desiring to participate at the hearing must submit a notice of intention to appear, postmarked no later than May 22, 1989. The notice of intention to appear must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence and, if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing.

Any party requesting more than 10 minutes for presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of testimony, including all documentary evidence to be presented at the hearing. These materials must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615, and must be postmarked no later than June 5, 1989.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the hearing.

Any party who has not substantially complied with the above requirement may be limited to a 10–minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office, Docket No. S-301B, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue NW., Washington, DC 20210 (202) 523–7894.

The hearing will commence at (9:30 a.m., on June 29, 1989, in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will begin with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the power:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable time to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notices of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and a determination will be made to modify or not to modify the requirements based on the entire record of the proceeding.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under section 6 of the Occupational Safety and Health Act (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 Fr 35736), and 29 CFR Part 1911.

Signed at Washington, DC this 17th day of April 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89–9579 Filed 4–20–89; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Public Notice; Permitting; Performance Standards; Bond Forfeiture

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) 08.13.09.01 General, COMAR 08.13.09.02 Permit Application, COMAR 08.13.09.13 Surface Effects of Deep Mines, COMAR 08.13.09.17 Small Operator's Assistance Program, COMAR 08.13.09.28 Special Performance Standards, COMAR 08.13.09.31 Topsoil Handling, COMAR 08.13.09.32 Excess Spoil Disposal, COMAR 08.13.09.33 Waste Handling, COMAR 08.13.09.34 Backfilling, COMAR 08.13.09.42 Permit Suspensions, Revocation and Bond Forfeiture, and COMAR 08.13.09.43 General Provisions on Adjudicatory Hearings.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on May 22, 1989. If requested, a public hearing on the proposed amendments will be

held at 1:00 p.m. on May 16, 1989; request to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 8, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contracting OSMRE's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, jr., Director, Charleston Field Office, (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982 **Federal Register** (47 FR 7214–7217). Subsequent actions concerning the Maryland program which led to further required amendments are discussed at 50 FR 47379–47386 (November 18, 1985) and are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendments

By letter on July 8, 1986, the Office of Surface Mining Reclamation and Enforcement (OSMRE) transmitted to Maryland a list of deficiencies which the OSMRE had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Record No. MD 351). After informal discussions with OSMRE on several items, on June 20, 1988, and December 27, 1988, Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) responded to the July 8, 1986, letter with the following proposed amendments to Maryland's federally approved program (Administrative Record No. MD 377 and 379).

In COMAR 08.13.09.01, General, the definition of soil horizons is changed to include a fourth horizon—"E"; Topsoil definition now includes "A" & "E" horizons; and separate definitions of "Excess Spoil and Coal Mine Waste" are added.

In COMAR 08.13.09.02Q, the MDBOM is explicitly given authority to agree or disagree with Survey of Structures and Renewable Lands reports and to act on its findings.

In COMAR 08.13.09.02R, reporting requirements of the subsidence control plan are expanded.

In COMAR 08.13.09.03A, Experimental Practices Mining, permit application requirements are expanded to require additional reporting and to provide for additional details regarding requested variances and revisions.

In COMAR 08.13.09.03B, Prime Farmlands, the requirement to conduct a reconnaissance inspection of the proposed permit area for the presence of possible prime farmlands is added as a requirement. The nature and extent of the reconnaissance inspection would be determined by the MDBOM in consultation with U.S. Soil Conservation Service. Further investigative steps to be taken would be based upon results of the inspection as outlined therein.

In COMAR 08.09.13.13, Surface Effects of Deep Mines, Part J, Subsidence Control, buffer zone restrictions on undergound mining activities "beneath or close to any public building" are changed to "beneath or adjacent to any public buildings or facilities." The MDBOM is therein empowered to limit the percentage of coal extracted under, or adjacent to, public facilities, or, to any significant source of public water supply. Details of operator reporting requirements in this area are outlined.

COMAR 08.09.13.17C, Eligibility for Assistance, restricts applicant's eligibility to receive aid by requiring that the applicant's probable total actual and attributed production (PTAAP) from all locations during any consecutive 12 month period during the term of the permit (or during the first 5 years after permit issuance) not exceed 100,000 tons. The definition of PTAAP is expanded to include restrictions of the applicant's interest in other coal producers.

In COMAR 08.09.13.17D, Filing for Assistance, the applicant is required to include in the application a statement of coal reserves in the permit area and to explain the method by which reserves were calculated.

In COMAR 08.09.13.17H, applicant liability to reimburse the MDBOM for the cost of laboratory services performed is expanded to include sale, transfer or assignment to a non-eligible person.

In COMAR 08.09.13.28A, Special Performance Standards, Auger Mining, prior approval by the MDBOM to affect previously undisturbed coal areas within an augering area is clearly delineated. Specifications on the physical limits of these areas are deleted. Auger hole plugging details are deleted. General performance standards for preventing subsidence are outlined and permittee requirements to correct, repair or compensate for damage from subsidence to surface lands or structures or facilities are added.

In COMAR 08.09.13.28, Special Performance Standards, Operations on Prime Farmlands, references to "A" horizon soil are deleted and replaced with "topsoil". Other suitable soils referred to in 28B(2) to be stored separately are changed from the "A" horizons or other suitable soil materials" and the "B" horizon" to read "topsoil or other suitable soil materials, the 'B' horizon or other suitable materials and the 'C' horizon" or other suitable soil materials.

In COMAR 08.09.13.28.B(4), Revegetation, Section (b) subparagraphs i, ii and iii are deleted and replaced with more detailed standards.

In COMAR 08.09.13.31, Topsoil Handling, Section (A)(5), the basis for a determination of the suitability of selected overburden materials for substitution for, or as a supplement to, topsoil in revegetation is deleted and replaced with a more generalized outline of requirements.

In COMAR 08.09.13.34B(2), Method of Backfilling & Grading, the scope or purpose of the backfilling requirements is revised to explicitly include the minimization of erosion and water pollution both on and off site.

In COMAR 08.09.13.34C, General Requirements, Section (1), the requirement that "The final graded slopes may not exceed in grade the approximate pre-mining slopes" is deleted.

In COMAR 08.09.13.34C(1)(b), the reference to a "minimum static safety factor 1.5" with respect to highwall elimination is changed to "minimum long term static safety factor of 1.5"

In COMAR 08.09.13.34.C(2)(d), the provision that "culverts and underground rock drains shall be used on the terrace only when approved by the Bureau" is deleted.

In COMAR 08.09.13.34.C(3)(a), the creation and enhancement of wildlife habitat is including as a possible reason for constructing small depressions in backfill areas; removing the restrictions of COMAR 08.09.13.34C(3)(c) against using small depressions as substitutes for lower grades on reclaimed lands are removed; and the requirement of obtaining written approval from MDBOM prior to construction is added.

In COMAR 08.09.13.34.(c)(4), the performance standard is revised to be less restrictive.

COMAR 08.09.13.34.(C)(5) is added to allow restricted placement of spoil on the permit outside the mined out area in nonsteep slope areas.

In COMAR 08.09.13.32, Excess Spoil Disposal, revisions are included to define placement of excess soil, design standards, lift placement heights, terrace construction, inspection requirements, treatment of acid or toxic forming excess spoil, certification requirements and reporting requirements. Of particular note is a specific provision to allow MDBOM to approve a design which incorporates placement of excess spoil in horizontal lifts exceeding four feet in thickness.

In COMAR 08.09.13.33, Waste Handling, the section is revised to provide for detail and/or changes to the existing performance standards regarding placement of coal mine waste, design certification requirements, foundation stability, water control measures, incineration, refuse pile requirements, impoundment restrictions, removal of burned or burning coal mine wastes, disposal of noncoal wastes, and design and construction requirements for coal mine waste impoundment structures.

In COMAR 08.09.13.42A(1), permittee abandonment of an operation is changed to "failure to produce coal or remove overburden." A permit revocation is made more permissive by replacement of "may" for "shall".

COMAR 08.09.13.42A(2) is deleted and revised to give the criteria for issuance of a show cause order.

COMAR 08.09.13.42A(3) is revised to place responsibilities for violations on a permit with the permittee unless sabotage is proven.

COMAR 08.09.123.42A(4) is deleted. COMAR 08.09.13.42A(5) replaces it in a revised format defining "persistent or repeated failure to comply."

In COMAR 08.09.13.42B, Show Cause and Hearing, the title is revised to "Show Cause Order and Hearing." The contents of the show cause order are defined. The 30 day opportunity for a permittee to request and adjudicatory hearing is delineated along with required preparatory actions for the hearing, if one is requested. The MDBOM's responsibility to establish a prima facie case for revocation of a permit and forfeiture of bond is detailed. Permittee responsibility to continue his duties under the permit during proceeding is noted. Conditions for suspension of the permit in lieu of revocation upon permittee demonstration of good faith efforts to bring an operation into compliance and the requirements of compliance agreements on permits are delineated. Authority for the lifting suspensions is defined to be with the MDBOM Director. Consequences of failure to comply with reclamation or compliance schedules is explained. Actions required of the MDBOM Director regarding permittee notification of forfeiture are defined.

Paragraphs (1) through (5) of COMAR 08.09.13.42D are deleted and replaced. Revised COMAR 08.09.13.42.D(1) defines the Director, MDBOM's actions when the right of appeal is not exercised or when the final decision, upon appeal, is to revoke the permit and forfeit the bond.

COMAR 08.09.13.42D(2) covers claims of collateral by a third party in cases where reclamation is completed by a third party. It further mandates forfeiture of the total bond amount regardless of the actual amount of reclamation work required at a site. All forfeited bond funds go to the Bituminous Coal Open-Pit Mining Reclamation Fund.

COMAR 08.09.13.42E is deleted and replaced with the requirement that show cause orders and notices be served on the permittee at the address shown on the permit or operator's address. Service of the show cause order is to be through mailing via certified mail. Service is considered complete upon mailing of the order.

COMAR 08.09.13.43, General Provisions on Adjudicatory Hearings, is generally modified to reflect MDBOM's current organizational position within the Division of Water Resources.

In COMAR 08.09.13.43(A), reference to "Article 41, 244 et seq" is deleted and replaced with "Section 10–201, et seq., State Government Article."

In COMAR 08.09.13.43B, paragraphs (1) and (2) are deleted and replaced with seven paragraphs detailing administrative procedures in the initial request for adjudicatory hearings.

COMAR 08.09.13.43, PreHearing Conference, is revised to fit the new organization structure as in COMAR 08.09.13.43E, F, and K. COMAR 08.09.13.43L, Questions of Law, is deleted. COMAR 08.09.13.M becomes COMAR 08.09.13.43L, Record or Adjudicatory Hearing.

COMAR 08.09.13.43N becomes COMAR 08.09.13.43, Decision. It is revised to fit the new organizational structure.

COMAR 08.09.343.0 becomes COMAR 08.09.13.43N, Award of Costs; of this, COMAR 08.09.13.43N(7) is appended to define appeals of decisions in an administrative proceedings which go to the Board of Review pursuant to COMAR 08.16.01.

COMAR 08.09.13.43P becomes COMAR 08.09.13.43.0, Delegation of Authority, Time Limitations. It is revised to fit the new organizational structure.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSMRE is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSMRE Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on May 8, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission or written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all person scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal Mining, Intergovernmental Relations, Surface Mining, Underground Mining.

Date: April 12, 1989.

Ronald C. Recker,

Acting Assistant Director.

FR Doc. 89-9547 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 948

West Virginia Regulatory Program; Conditions of State Program Approval

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments contain revisions to the State's surface mining and coal refuse disposal regulations. The amendments are intended to satisfy five of the remaining six conditions of program approval concerning augering on previously mined areas, coal refuse disposal, applicant violator information, revegetation and show cause orders. In addition, the State has proposed several revisions to its permitting requirements and has made numerous editorial changes which reflect the creation of the Department of Energy (DOE).

This notice sets forth the times and locations that the West Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on May 22, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on May 11, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 8, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, ATTENTION: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendments (Adminsitrative Record Nos. WV 766 and WV 767), the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240. Telephone: (202) 343-5492

West Virginia Department of Energy, 1615 Washington Street, East Charleston, West Virginia 25311. Telephone: (304) 348-3500

In addition, copies of the proposed amendments are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office 75 High Street, Room 229, Morgantown, West Virginia 26505. Telephone: (304) 291-4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 101 Harper Park Drive, Beckley, West Virginia 25801. Telephone: (304) 255-5265

Each requester may receive, free of charge, one single copy of the proposed program amendments by contacting the OSMRE Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On March 3, 1980, the Secretary of the Interior received a proposed permanent regulatory program from the State of West Virginia. On October 22, 1980, following a review of the proposed program in accordance with 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program (45 FR 69249-69271).

West Virginia resubmitted its proposed program on December 19, 1980, which was conditionally approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the initial conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of Proposed Amendments

As discussed above, West Virginia's permanent regulatory program was conditionally approved by the Secretary of the Interior on January 21, 1981.

On July 11, 1985, the Director of OSMRE approved the West Virginia Energy Act (WVEA) as an amendment to the West Virginia program, with the exception of nine provisions which were required to be amended by March 15, 1986. On July 11, 1985, the Director also approved in part the State's revised regulations that were submitted on June 14, 1985. The Director's approval resulted in the removal of ten conditions. The State was given until January 11, 1986, to satisfy six remaining conditions (50 FR 28316-28345).

Because of legislative scheduling problems, on February 10, 1986, the State notified OSMRE that it would not be able to meet the January 11, 1986, deadline for addressing the six regulatory conditions and the March 15, 1986, deadline for satisfying the nine required statutory amendments (Administrative Record No. WV 707). On June 30, 1986, the State requested that the submission deadlines for both the conditions and the required amendments be extended to April 15, 1987 (Administrative Record No. WV 709).

On November 10, 1986, the Secretary approved the State's request and extended the deadline for the submission of materials satisfying the remaining conditions of program approval and the required statutory amendments until April 15, 1987 (51 FR 40795-40796).

On April 6, 1987, the State informed OSMRE that it was unable to initiate action on its legislative proposals to satisfy its program conditions by the April 15, 1987, deadline. The State requested that the deadline be extended for one year (Administrative Record No. WV 733).

On June 19,1987, OSMRE requested that the State enact emergency regulations to satisfy the six remaining regulatory conditions. OSMRE acknowledged the State's request for a one year extension to satisfy its nine required statutory amendments (Administrative Record No. WV 754).

On July 1, 1987, DOE advised OSMRE that it was unable to develop a workable set of emergency regulations to satisfy its regulatory conditions. The State indicated that the conditions would be addressed in the regulatory reform package which it was developing in response to OSMRE's regulatory reform letter of August 19, 1986. The State planned to submit the entire package to the Legislative Rulemaking Review Committee in late August (Administrative Record No. WV 735).

On October 19, 1987, DOE and OSMRE officials met to discuss the remaining conditions on West Virginia's permanent regulatory program. At the meeting, the State agreed to submit emergency regulations to satisfy all but one of its conditions. State officials later advised OSMRE that given the complexity of the task and to avoid confusing the Legislature, they only planned to submit emergency regulations to satisfy one condition relating to compliance information requirements for permit applications (Administrative Record WV 738). On October 27, 1987, the State submitted a proposed program amendment to OSMRE. The amendment contained an emergency rule that was filed with the Secretary of State on October 21, 1987, to satisfy the condition at 30 CFR 948.11(a)(19) relating to compliance information (Administrative Record No. WV 743).

In October 1987, and again in January 1988, DOE submitted revised regulations to the Legislative Rulemaking Review Committee. The West Virginia Legislature adjourned in March 1988, without adopting DOE's proposed regulations. Due to unforeseen problems, DOE's proposed legislation to satisfy its nine required statutory amendments was never submitted to the Legislature for consideration.

On July 7, 1988, DOE submitted a proposed amendment to OSMRE which contained surface mining reclamation regulations and coal refuse disposal regulations which the State filed with the Secretary of State on an emergency basis on July 15, 1988 (Administrative Record No. WV 756). The revised regulations are intended to satisfy five of the remaining conditions imposed on the West Virginia program on July 11, 1985, and set forth at 30 CFR 948.11(a). The existing conditions concern stability analyses for coal mine waste piles, inspection requirements for coal mine waste piles, inspection requirements for coal mine waste disposal areas, compliance information requirements for permit applications, critical habitats of threatened and endangered species with respect to coal exploration permit applications, revegetation success standards and evaluation techniques and the issuance of show cause orders for patterns of violations. A portion of the condition relating to satistical sampling techniques and productivity measurements for revegetation is to be addressed later in the State's Technical Handbook. In addition, the State revised certain permit application, bonding, water monitoring, backfilling, and incidental mining requirements.

On August 10, 1988, DOE revised its emergency regulations that were submitted to OSMRE on July 7, 1988. The revisions were filed with the Secretary of State on August 5, 1988, as emergency amendments to the emergency regulations filed on July 15, 1988. The revisions were necessary to correct a number of typographical and editorial errors. DOE also made significant revisions to the applicability section of the regulations and deleted the acreage limit for incidental boundary revisions for underground mining operations (Administrative Record WV 766).

On September 9, 1988, DOE held a public hearing on the revised emergency regulations, and on September 19, 1988, DOE submitted its revised emergency regulations to the Legislative Rulemaking Review Committee for consideration.

On November 29, 1988, the State provided OSMRE a list of minor changes that had been made to its revised emergency regulations that had been filed with the Secretary of State on August 5, 1988. The most significant revision concerned the inspection of coal refuse piles (Administrative Record No. WV 767).

III. Public Comment Procedure

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comments on the proposed amendments submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSMRE is seeking comments on the emergency surface coal mining and coal refuse disposal regulations submitted on August 10, 1988, and the revisions submitted on November 29, 1988 (Administrative Record Nos. WV 766 and WV 767). Comments should address whether the proposed amendments are as stringent as SMCRA and no less effective than its implementing regulations. If approved, the amendments will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Charleston Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on May 8, 1989. If no one has requested an opportunity to participate in the hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests to comment at a hearing, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE Charleston Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such meetings are open to the public and, if possible, notices of

meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: April 13, 1989.

Ronald C. Recker

Assistant Director, Eastern Field Operations.

[FR Doc. 89-9548 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400021, FRL-3559-6]

Community Right-to-Know Release Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add 10 chemicals to the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986. The addition of nine of these chemicals is based on their carcinogenicity or other chronic toxicity as reflected in determinations made under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. EPA believes that these chemicals meet the criteria for addition to the list of toxic substances as established in section 313(d)(2). EPA is also proposing to add toluenediisocyanate (mixed isomers) (CAS Registry Number: 26471-62-5) to the section 313 list. It is expected that mixtures of toluenediisocyanate isomers would generally cause the same health and environmental effects as the individual isomers already included on the section 313 list.

DATE: Written comments on this proposed rule should be submitted by June 5, 1989.

ADDRESS: Comments should bear the docket control number OPTS-400021 and should be submitted to: OTS Docket Clerk, TSCA Public Docket Office, Environmental Protection Agency, Mail Stop TS-793, Room NE-G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Number OPTS-400021.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Project Manager, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M St., SW., Mail Stop WH-562A, Washington, DC 20460, Toll free: 800-535-0202, in Washington, DC and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION: EPA is proposing to add 10 chemicals to the list of toxic chemicals under section 313 of Title III of SARA (Pub. L. 99-499) ("SARA" or "the Act").

The public reporting burden for this collection of information is estimated to average 23 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503.

I. Introduction

A. Statutory Authority

EPA is proposing to add 10 chemicals to the list of toxic substances under section 313(d)(2) of SARA Title III. Section 313 of Title III requires owners and operators of covered facilities to report annually their releases of listed toxic chemicals. SARA section 313(d)(1) authorizes EPA to add or delete chemicals to the list of toxic chemicals by rulemaking at any time. Section 313(d)(2) states that a chemical may be added if the Administrator determines that there is sufficient evidence to establish that a chemical is known to cause or can reasonably be anticipated to cause adverse acute human health effects based on recurring or continuous releases, chronic human health effects, or environmental toxicity.

B. Background

To date, modifications to the list of toxic chemicals have occurred solely as a result of petitions received by EPA under section 313(e). These petitions have focused almost exclusively on requests for deletions and have led to five proposed or final rules.

While promulgated and proposed deletions to the list have been warranted, EPA recognizes the likelihood that there are chemicals not currently subject to section 313 reporting requirements which meet the criteria for addition as described in section 313(d)(2). By reviewing numerous petitions, EPA has been able to gain valuable experience in defining more precisely, the types of chemicals for which it would be most appropriate to require annual release reporting.

This action represents only the first attempt by EPA to modify the list of reportable chemicals under section 313. EPA will continue to look to other sources to add chemicals to the list which pose known or anticipated health and environmental hazards as established in section 313(d). The Agency is currently looking into a more comprehensive effort in developing a process to screen chemicals for addition to and deletion from the section 313 list; however, this effort is not the subject of this proposal. EPA invites public comment on the approach used in this rulemaking as well as on criteria for future additions to, and deletions from, the section 313 list.

EPA intends to evaluate public comment and promulgate a final rule by the fall of 1989 such that reporting for the identified chemicals will be required for activities during the 1990 calendar year. Such reports would have to be submitted to EPA and States by July 1, 1991.

II. Methodology and Rationale

A. Development of the Addition Candidates

There are currently over 2,500 chemicals which are regulated by EPA under its various statutes. As a starting point for screening candidates for addition to the toxic chemical list under SARA section 313, EPA chose to examine the list of chemicals under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601, *et seq.* CERCLA section 102(a) requires EPA to promulgate regulations designating hazardous substances which may present substantial danger to public health or welfare of the environment when releases to the environment occur. Section 102 of CERCLA also requires EPA to establish reportable quantities (RQs) for such chemicals. CERCLA section 103 (a) and (b) requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the RQs immediately report to the National Response Center.

The CERCLA section 102 list was chosen for the first screening for a number of reasons. The CERCLA section 102 list is the broadest list of chemicals identified as being of concern to various EPA programs. Also it is one of the bases for reporting under another part of Title III (section 304) and is evolving into an "umbrella" list for Title III with the proposed addition of the Extremely Hazardous Substances (section 302 of Title III) (54 FR 3388). Utilization of the CERCLA RQ list as a source of candidates for addition to section 313 can therefore serve to bring about some unification for chemicals subject to reporting under various Title III sections. Finally, toxicological evaluations have already been conducted for chemicals on the CERCLA section 102 list and the resulting conclusions documented and reflected in the adjusted RQs.

B. Criteria for the Candidate List

CERCLA section 102(a) allows EPA to adjust RQ levels for specific chemicals. In establishing and adjusting the RQ levels, EPA evaluates the intrinsic physical, chemical, and toxicological properties of each chemical. The primary criteria used to adjust an RQ for a particular chemical are carcinogenicity, chronic toxicity, aquatic toxicity, mammalian toxicity, ignitability, and reactivity. EPA ranks each of these properties, with the exception of potential carcinogenicity, on a five-tier scale, associating a specified range of values on each scale with a particular RQ. The five-tier scale uses the five RQ levels (1, 10, 100, 1,000, and 5,000 pounds), while the three-tier scale for potential carcinogenicity uses three levels (1, 10, and 100 pounds). Thus, an RQ can be assigned for each of the above properties. The lowest of all of the tentative RQs becomes the "primary criteria RQ" for a particular substance. EPA then considers secondary criteria (biodegradation, hydrolysis, and photolysis) which may be used to adjust the "primary criteria RQ" to establish a final RQ.

In reviewing the RQ methodology for its application to the section 313(d)(2) criteria, EPA wanted to ensure that chemicals which are added to the section 313 list have high concerns for properties which are most relevant to section 313. For example, ignitability and reactivity which are not specifically mentioned in section 313(d) have not been considered in this rulemaking. For this reason, EPA considered only the criteria of chronic toxicity and carcinogenicity. Although aquatic and mammalian toxicity are relevant to section 313, EPA chose to only address chronic human toxicity in this rulemaking. As previously stated, this is EPA's first attempt to initiate modification to the section 313 list; other section 313 toxicity endpoints, such as aquatic and mammalian toxicity, will be considered in future modifications.

1. *Chronic toxicity.* When evaluated for chronic toxicity under the CERCLA methodology, chemicals are assigned scores which are based on the Minimum Effective Dose (MED) levels for repeated exposures and the severity of the effect (liver necrosis, birth defects, death, etc.) likely to be cause by repeated exposure. These scores are then used to assign the RQ for chronic toxicity. For a detailed explanation of the derivation of the scoring methodology see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, August 1986 (Docket number: 102RQ–R1–3–1) available for inspection at Room LG–100, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC. As discussed in the **Federal Register** of May 25, 1983 (48 FR 23564) for the proposed rulemaking on RQ adjustments, the MED and the severity of effect were each assigned values of 1 to 10. A score of 10 for the MED Level indicates only a small dose is required to elicit an effect. Similarly, a score of 10 for severity of effect indicates the most severe effects were observed for the MED, such as pronounced pathological changes or death. A composite score is reached by multiplying the MED and effect scores. RQs are then assigned based on these composite scores.

2. *Carcinogenicity.* Details of the proposed CERCLA RQ methodology for assigning RQs for potential carcinogens can be found in the **Federal Register** of March 16, 1987 (52 FR 8140). This is a proposed rulemaking which, as of this time, has yet to be finalized. EPA reviews four sources of human epidemiologic and/or animal bioassay data on hazardous substances that suggest possible carcinogenic effect. These sources are: (1) The Annual Report on Carcinogens of the National Toxicology Program, U.S. Department of Health and Human Services (DHHS); (2) the Monographs of the International Agency for Research on Cancer (IARC); (3) final Agency determinations published in the **Federal Register** identifying substances as potential carcinogens; and (4) ongoing determinations by EPA's Office of Health and Environmental Assessment that substances may be potential carcinogens.

During the carcinogenic evaluation, EPA considers qualitative and quantitative assessments to assign RQs. During the qualitative assessment, EPA evaluates the quality and reliability of the data to determine the "weight of evidence" that a particular hazardous substance is a human carcinogen. The quantitative assessment utilizes available data to calculate a potency factor. Thus, carcinogenic hazard ranking is based on the weight of evidence and potency determinations. For further discussion of the hazard ranking, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, December 1986 (Docket number: 102RQ–273C–4) available for inspection at Room LG–100, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC.

III. Evaluation of CERCLA Chemicals for Addition to Section 313

A. Thresholds for Developing a List for Addition

EPA used two criteria to evaluate chemicals on the CERCLA section 102 list for addition to section 313, the CERCLA RQ scores for carcinogenicity and chronic toxicity and the production volume.

Since the CERCLA section 102 list has already been evaluated by EPA for carcinogenicity and chronic toxicity, EPA chose certain RQ scores as thresholds for these effects. Chemicals with assigned RQ levels at or below the threshold are interpreted to meet the criteria established in section 313(d)(2). EPA set a RQ threshold level of 100 pounds for carcinogenicity and chronic toxicity based on the methodology and sources used to assign RQs for these effects. EPA believes that the assignment of RQs of 100 pounds or less for chronic toxicity and carcinogenicity could establish the finding that must be made under section 313(d) that these chemicals are known to cause or can reasonably be anticipated to cause cancer or other serious or irreversible chronic effects in humans. For example, isosafrole (CAS Registry Number: 120–58–1) has an assigned RQ of 100 pounds for carcinogenicity. In its evaluation, EPA has ranked this chemical as a class B2 carcinogen according to EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992). Chemicals are classifed as B2 carcinogens when there is sufficient evidence that the chemical causes cancer in animal studies and therefore is a probable human carcinogen. EPA believes that this evidence is sufficient to satisfy the SARA section 313(d) finding that

isosafrole can reasonably be anticipated to cause cancer in humans.

Chemicals with final RQ scores of 100 or less based on aquatic toxicity, mammalian toxicity, ignitability, and reactivity were screened for scores reflecting assessments based on their cancer and chronic toxicity potential. In other words, a chemical with a final RQ of 1 pound based on reactivity was still screened for its carcinogenicity and chronic toxicity scores. If that score is less than or equal to 100 pounds, then the chemical meets the threshold outlined in this proposal.

SARA section 313(f) established reporting thresholds related to the amount of a chemical that is manufactured, processed, or used. Thus EPA also screened the CERCLA section 102 list for production volume. Chemicals without a known production volume are not proposed for addition even if they meet the RQ threshold of 100 pounds. Production volume data for the CERCLA section 102 list was gathered from the Toxic Substances Control Act (TSCA) Confidential Inventory Update System (1986). This data base contains production volume information for a large number of chemicals from chemical manufacturers. EPA screened this data base for CERCLA section 102 chemicals with a minimum production volume of 25,000 pounds. This threshold corresponds to the section 313 threshold for manufacturers and processors for the 1989 reporting year and beyond.

B. Proposed Additions

EPA Initially screened the 611 chemicals on the CERCLA section 102 list for chemicals with an underlying RQ for cancer or chronic toxicity of 100 pounds or less. This resulted in a list of 156 chemicals. These chemicals were then screened for associated production volumes of at least 25,000 pounds. This resulted in a list of 18 chemicals for addition to the section 313 list. Of these 18 chemicals, 9 were already reportable under one of the section 313 chemical categories. For example, strontium chromate is assigned as underlying RQ of 1 pound for carcinogenicity and has a significant production volume. It is not specifically listed on the section 313 list with a CAS registry number, but it is reportable under section 313 as a "chromium compound." EPA decided not to propose listing these chemicals since they are already reportable under the categories.

The above analysis yields nine chemicals which EPA is proposing to add to the section 313 list. EPA has determined that each of these chemicals causes or can reasonably be anticipated to cause cancer or serious irreversible chronic health effects in humans. Table 1 below summarizes the list of chemicals proposed for addition.

TABLE 1.—PROPOSED ADDITION CANDIDATES: CERCLA SECTION 102 CHEMICALS WITH CANCER AND CHRONIC TOXICITY CONCERNS

CAS registry number	Chemical name	RQ score	Basis of score	Federal Register Citation	Chemical Specific Docket Number
78-88-6	2,3-Dichloropropene	100	CTX	51 FR 34534	102RQ-R1-2-1
99-65-0	m-Dinitrobenzene	100	CTX	50 FR 13456	102RQ-10-3-60
100-25-4	p-Dinitrobenzene	100	CTX	50 FR 13456	102RQ-10-3-60
107-18-6	Allyl Alcohol	100	CTX	50 FR 13456	102RQ-10-3-5
109-89-7	Diethylamine	100	CTX	51 FR 34534	102RQ-R1-2-1
120-58-1	Isosafrole	100	CARC	52 FR 8140	102RQ-273C-2-2
528-29-0	o-Dinitrobenzene	100	CTX	50 FR 13456	102RQ-10-3-60
8001-58-9	Creosote	1	CARC	52 FR 8140	102RQ-273C-2-2
25321-14-6	Dinitrotolune (mixed isomers)	10	CARC	52 FR 8140	102RQ-273C-2-2

Note: Known production volumes range from 236,000—315,000,000 lbs/yr. CTX = Chronic Toxicity; CARC = Carcinogenicity.

Production volumes for these chemicals ranges from 236,000 to 315 million pounds per year. Toxicologic profiles on each specific chemical can be found in the docket associated with each CERCLA **Federal Register** notice indicated in Table 1.

1. *Dinitrobenzenes.* The derivation of RQ scores for *ortho-*, *meta-*, and *para-*dinitrobenzene is based on a subchronic study of *meta*-dinitrobenzene. EPA considers this approach appropriate in light of the fact that the American Conference of Governmental Industrial Hygienists (ACGIH) considers that the toxicologic properties of all isomers should be similar and has set identical standards for them.

Male rats exposed orally to *meta*-dinitrobenzene in the diet for 16 weeks showed testicular atrophy with indication of loss of function. EPA believes this information is sufficient to establish that *ortho-*, *meta-*, and *para-*dinitrobenzene are known or can reasonably be anticipated to cause serious reproductive dysfunctions in humans.

2. *Allyl alcohol.* Exposure of rats, guinea pigs, and rabbits to 17 mg/m^3 of allyl alcohol via inhalation for 7 hours per day, 5 days per week for 5 weeks led to necrosis of the liver and kidney. EPA believes this information is sufficient to establish the finding that allyl alcohol is known or can reasonably be anticipated to cause serious chronic health effects in humans.

3. *Diethylamine.* Inhalation exposure of 50 parts per million of diethylamine to rabbits for 7 hours per day, 5 days per week for 6 weeks led to pulmonary irritation, multiple punctate corneal erosions and edema, and histological changes in the liver. EPA believes this information is sufficient to establish that diethylamine is known or can reasonably be anticipated to cause serious chronic health effects in humans.

4. *2,3-Dichloropropene.* The RQ derivation for this chemical is based on studies using 1,3-dichloropropene. RQ scores for 1,3-dichloropropene are viewed by EPA to be protective for all dichloropropenes.

In a subchronic inhalation study, rats exposed to 3 parts per million of 1,3-dichloropropene for 4 hours per day, 5 days per week for 6 months, exhibited slight cloudy swelling of the renal tubular epithelium. Based on the above data, EPA has determined there is sufficient information to establish that the 2,3-dichloropropene is known to cause or can reasonably be expected to cause serious chronic effects in humans.

5. *Isosafrole.* A weight of evidence determination classifies isosafrole as a Group B2 carcinogen under the EPA Proposed Guidelines for Carcinogenic Risk Assessment (U.S. EPA, 1984). Evidence on potential carcinogenicity from animal studies is sufficient to determine that isosafrole is known or can reasonably be anticipated to cause cancer in humans.

6. *Creosote.* A weight of evidence determination classifies creosote as a

Group B1 carcinogen under the EPA Proposed Guidelines for Carcinogenic Risk Assessment. There is sufficient animal evidence and limited human evidence to determine that creosote is known or can reasonably be anticipated to cause cancer in humans.

7. *Dinitrotoluene (mixed isomers).* A weight of evidence determination classifies dinitrotoluene (mixed isomers) as a Group B2 carcinogen under the EPA Guidelines for Carcinogenic Risk Assessment. There is sufficient animal evidence to determine that dinitrotoluene (mixed isomers) is known or can reasonably be anticipated to cause cancer in humans.

C. Toluenediisocyanate

EPA also proposes to modify the section 313 list by adding the entry toluenediisocyanate (TDI) (mixed isomers) (CAS Registry Number: 26471–62–5). TDI is listed under § 372.65(a) and (b) for annual release reporting in two isometric forms. Specifically, these chemicals are toluene-2,4-diisocyanate (2,4–TDI) (CAS Registry Number: 584–84–9) and toluene-2,6-diisocyanate (2,6–TDI) (CAS Registry Number: 91–08–7). While manufacturers, processors, and users of these two specific isomers are required to report under section 313, TDI is more commonly manufactured as a mixture of isomers, i.e., an 80:20 mixture of 2,4- and 2,6-TDI. During the first year of reporting under sectin 313, EPA received many questions pertaining to the reportability of TDI mixtures.

Furthermore, many Toxic Release Inventory forms were received containing the CAS Registry Number (26471–62–5) for TDI as an isometric mixture.

The section 313 list of toxic chemicals already contains similar entries for other isomeric mixtures. For example, *o*,-cresol (CAS Registry Number: 95–48–7), *m*-cresol (CAS Registry Number: 108–39–4), and *p*-cresol (CAS Registry Number: 106–4–5) are all individually listed on the section 313 list; however, there is also an entry for cresol (mixed isomers) (CAS Registry Number: 1319–77–3).

Both of the specific isomers of TDI listed under section 313 have associated acute, chronic, and environmental toxicity as summarized in a Chemical Hazard Information Profile. The most prominent health effects of TDI are of the respiratory tract, skin, eyes, and central nervous system. Respiratory illnesses have been documented in workers from exposure to TDI which include irritation of the upper and lower respiratory tract, an asthma-like sensitization response, and decrements in lung function. Sensitization has been found to occur at levels of less than 0.005 parts per million. EPA believes that the isometric mixture of TDI also meets the criteria in section 313(d)(2) because the TDI mixture causes or can reasonably be anticipated to cause serious or irreversible chronic effects. Therefore, EPA is proposing to modify the list of toxic substances under section 313 to include the CAS listing, 26471–62–5, for the mixture.

IV. Rulemaking Record

The record supporting this proposed rule is contained in the docket number OPTS–400021 and in the CERCLA dockets referenced in Table 1. Nonconfidential documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M Street SW., Washington, DC. The CERCLA dockets which are part of this rulemaking are available to the public in CERCLA Public Docket Office which is located at EPA Headquarters, Rm. LG–100, 401 M Street SW., Washington, DC.

V. Regulatory Assessment Requirements.

A. Executive Order 12291

Executive Order (E.O.) 12291 requires each federal agency to classify as "major" any rule like to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

EPA's economic analysis estimates up to 659 additional reports entailing annual costs to EPA, industry, and States of about $786,000 as a result of the proposed addition of 10 chemicals to the section 313 list of toxic chemicals. EPA anticipates that this proposed addition will not have a significant effect on competition, costs, or prices. Therefore, EPA has determined that this proposed rule is not "major."

This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexiblity Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR Part 372 exempts contain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. EPA estimates that the proposed addition of 10 chemicals will require reporting from less than 1 percent of manufacturing facilities with between 10 and 50 employees.

The analysis supporting this proposed rule anticipates that no segment of the manufacturing sector is likely to suffer significant adverse effects because of this rule. Reporting costs are estimated at less than 0.25 perecent of median sales per report for affected facilities with 10 to 19 full-time employees in manufacturing SICs 20 through 39. Based on the 10 proposed chemicals, it is unlikely that any facilities with 10 to 19 employees will have to file reports for more than one chemical.

Therefore, EPA certifies that this proposed rule will not have a significant impact on a substantial number of small entities and that no Regulatory Flexibility Analysis is needed.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0093.

The public reporting burden for this collection of information is estimated to average 23 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to

any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: April 6, 1989.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR Part 372 be amended to read as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to paragraph (b) by CAS No. sequence to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
*	*	*
Allyl alcohol	107-18-6	1/01/90
*	*	*
Creosote	8001-58-9	1/01/90
*	*	*
2,3-Dichloropropene	78-88-6	1/01/90
*	*	*
Diethylamine	109-89-7	1/01/90
*	*	*
m-Dinitrobenzene	99-65-0	1/01/90
o-Dinitrobenzene	528-29-0	1/01/90
p-Dinitrobenzene	100-25-4	1/01/90
*	*	*
Dinitrotoluene (mixed isomers).	25321-14-6	1/01/90
*	*	*
Isosafrole	120-58-1	1/01/90
*	*	*
Toluenediisocyanate (mixed isomers).	26471-62-5	1/01/90
*	*	*

(b) * * *

Cas No.	Chemical name	Effective date
*	*	*
78-88-6	2,3-Dichloropropene	1/01/90
*	*	*
99-65-0	m-Dinitrobenzene	1/01/90
*	*	*
100-25-4	p-Dinitrobenzene	1/01/90
*	*	*
107-18-6	Allyl alcohol	1/01/90
*	*	*
109-89-7	Diethylamine	1/01/90
*	*	*
120-58-1	Isosafrole	1/01/90
*	*	*
528-29-0	o-Dinitrobenzene	1/01/90
*	*	*
8001-58-9	Creosote	1/01/90
*	*	*
25321-14-6	Dinitrotoluene (mixed isomers).	1/01/90
*	*	*
26471-62-5	Toluenediisocyanate (mixed isomers).	1/01/90
*	*	*

[FR Doc. 89-9620 Filed 4-20-89; 8:45 am]
BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 76
Friday, April 21, 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.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Sunflowerseed Oil Assistance Program (SOAP) and Cottonseed Oil Assistance Program (COAP)

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that USDA will use during fiscal years 1989 and 1990 $20,000,000 to purchase sunflowerseed oil and cottonseed oil. This sunflowerseed oil and cottonseed oil will be made available to U.S. exporters to facilitate additional sales of sunflowerseed oil and cottonseed oil in targeted world markets.

ADDRESS: Comments and proposed alternate systems for the Sunflowerseed Oil Assistance Program (SOAP) and the Cottonseed Oil Assistance Program (COAP) should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250. A request to receive copies of the announcements under these programs may be made by writing to the Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, Phone (202) 447-6225 or William Hawkins, Agricultural Marketing Specialist, of the same Division, Phone (202) 447-3241.

SUPPLEMENTARY INFORMATION: Section 639 of the Rural Development, Agriculture and Related Agencies Appropriations Act, 1989, Pub. L. 100-460, provides that during fiscal years 1989 and 1990 $20 million of funds available under section 32 of the Act of August 24, 1935, Pub. L. 320, Seventy-Fourth Congress (section 32), shall be used to purchase sunflowerseed oil and cottonseed oil for use in facilitating additional export sales of sunflowerseed oil and cottonseed oil at competitive prices, so as to compete with other countries.

The export promotion activity of the Sunflowerseed Oil Assistance Program (SOAP) and the Cottonseed Oil Assistance Program (COAP) implemented under this authority will be administered by the General Sales Manager, Foreign Agricultural Service.

The SOAP and COAP will be designed to increase export sales of sunflowerseed oil and cottonseed oil to those markets where U.S. exporters have been subjected to unfair competition by nations that subsidize their exports of vegetable oil.

The programs will have two distinct parts. First, the Department of Agriculture will, from time to time, issue an Invitation for Bids to purchase sunflowerseed oil or cottonseed oil. Second, the purchased oil will be made available to U.S. exporters in the form of bonuses for the purpose of increasing export sales of sunflowerseed oil or cottonseed oil.

Periodically, the General Sales Manager will issue announcements and invitations for bonus offers containing the terms and conditions of the SOAP or the COAP. These will specify, among other things, the quantity of the respective oils for which bonuses will be made available and the countries to which the oil must be exported.

In general, it is anticipated that the export part of these programs will work as follows:

(1) U.S. exporters must qualify before they may enter into an agreement with the General Sales Manager. Interested U.S. exporters may contact the CCC Operations Division at the above address to obtain the specific qualifications requirements established for the programs.

(2) Exporters participating under the programs will be required to furnish an adequate performance security prior to entering into an agreement with the General Sales Manager.

(3) Upon issuance of announcements and invitations by the General Sales Manager, an exporter may enter into a contract to sell sunflowerseed oil or cottonseed oil overseas in accordance with the terms and conditions of the applicable announcement and invitation. This contract may provide that the export sale is contingent upon the acceptance by the General Sales Manager of the exporter's bonus offer.

(4) After entering into a sales contract with a foreign buyer, an exporter may submit a bonus offer to the General Sales Manager. Each invitation will state that the bonus offer should specify the quantity of the oil requested for a bonus in terms of pounds per metric ton and will also state the process for submitting bonus offers. The bonus offer should be for only the quantity that is needed to make the exporter's sale competitive with export sales from other suppliers of vegetable oil to the country specified in the applicable invitation.

(5) Bonus offers, which comply with the terms and conditions of the applicable announcement and invitation, will be reviewed by the General Sales Manager on a competitive basis, considering the bonus requested, the sale price, and the sales prices of competitor countries in the same market. The General Sales Manager will reserve the right to reject any and all offers for a bonus.

(6) If the exporter's bonus offer is accepted, the exporter will be notified in writing.

(7) The exporter must furnish evidence that the sunflowerseed oil or cottonseed oil has been exported in accordance with the terms and conditions of the agreement. The exporter may then request delivery of the bonus.

(8) After the General Sales Manager has determined that the exporter has complied with all the terms and conditions of the agreement, the performance security(ies) will be released.

Signed at Washington, DC, on April 17, 1989.

Christopher E. Goldthwait,

Acting General Sales Manager.

[FR Doc. 89-9608 Filed 4-20-89; 8:45 am]

BILLING CODE 3410-10-M

CIVIL RIGHTS COMMISSION

Illinois Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights,

that a subcommittee meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on May 12, 1989, at the Palmer House and Towers, 17 East Monroe, Chicago, Illinois. The purpose of this subcommittee meeting is to plan for a future committee forum on issues related to access to public education for minority students.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh J. Schwartzberg, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 13, 1989.

Melvin L. Jenkins.

Acting Staff Director,

[FR Doc. 89–9572 Filed 4–20–89; 8:45 am]

BILLING CODE 6335–01–M

Louisiana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m., on Friday, May 12, 1989, at the Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, Louisiana. The purpose of the meeting is to receive information regarding voter registration and voter-roll purging procedures in Louisiana parishes.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 17, 1989.

Melvin L. Jenkins.

Acting Staff Director,

[FR Doc. 89–9573 Filed 4–20–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will convene on May 24, 1989 at the California State University, 5241 N. Maple Street, Fresno, California 93710.

The Committee advises the Director, Bureau of the Census, on the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural reports; and presents the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee and a representative from the Department of Agriculture.

The agenda for the May 24 meeting that will begin at 9:00 a.m. and adjourn at 4:30 p.m. is: (1) Introductory remarks by the Associate Director for Economic Programs, Bureau of the Census; (2) 1987 Agriculture Census update; (3) data needs for rural areas; (4) mandatory vs. voluntary reporting issues; (5) 1992 census data content requirements and methodology testing; (6) combined data from agriculture and economic censuses; (7) election of chairperson-elect; and (8) Committee recommendations.

The meeting is open to the public and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Mr. George Pierce, Agriculture Division, Bureau of the Census, Room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone (301) 763–8556.

Date: April 14, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–9544 Filed 4–20–89; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

[Docket No. 90253–9053]

Crude Oil Export Study

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of public hearings on the section 2424 Crude Oil Export Study.

SUMMARY: Consistent with the U.S. Department of Commerce's commitment to solicit public comment and to involve the public in the review of crude oil export policy, the Bureau of Export Administration is sponsoring public hearings on the Crude Oil Export Study which Commerce is required to prepare under section 2424 of the Omnibus Trade and Competitiveness Act of 1988. This notice identifies issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held in Houston, Texas, on May 11, 1989, and Long Beach, California, on May 12, 1989. Requests to speak are due by May 1, 1989, for the Houston hearing and May 2, 1989, for the Long Beach hearing. The hearing in Houston will be held at the City Council Chambers, second floor, Houston City Hall, 901 Bagby, Houston, Texas 77002. The hearing in Long Beach will be held at the Port of Long Beach, Board Room, 925 Harbor Plaza, Long Beach, California 90802.

ADDRESS: Send requests to speak to: Bernard Kritzer, Senior Energy Advisor, Office of Industrial Resource Administration, Room H–3878, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–4060.

Send written copies of the oral presentation to the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Attn: Margaret Cornejo, Bureau of Export Administration, U.S. Department of Commerce, Room H–4886, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Energy Advisor, Office of Industrial Resource Administration, Room H–3878, U.S. Department of Commerce, Washington, DC 20230, (202) 377–4060.

SUPPLEMENTARY INFORMATION:

I. Background and specific comments requested
II. Public hearing and comment procedures

I. Background and Specific Comments Requested

Section 2424 of the Omnibus Trade and Competitiveness Act of 1988 requires that the Secretary of Commerce, in consultation with the Secretary of Energy, undertake a comprehensive review to assess whether existing statutory restrictions on the export of crude oil produced in the lower 48 States are adequate to protect the energy and national security interests of the United States and American consumers.

Commerce is currently undertaking a comprehensive review of export control restrictions on crude oil produced in the lower 48 States. For further details concerning this study, see the **Federal Register** of March 8, 1989 (54 FR 9867).

The presentations at the hearings will assist the Department of Commerce in learning more about the public perspectives on the existing export restrictions on crude oil produced in the lower 48 States, with emphasis on the heavy oil produced in California. The Department requests speakers to provide suggestions as to whether the current export control restrictions should be maintained or modified in order to serve the energy and national security interests of the United States and American consumers.

In particular, but without limiting the scope of the information requested, we solicit your views on the following:

(a) The adequacy of domestic supplies of crude oil and refined petroleum products in meeting United States energy and national security needs;

(b) The quantity, quality, and retail price of petroleum products available to consumers in the United States generally and on the West Coast in particular;

(c) The overall trade deficit of the United States;

(d) The acquisition costs of crude oil by domestic refiners;

(e) The financial viability of sectors of the domestic petroleum industry (including independent refiners, distributors, marketers, and pipeline carriers); and

(f) The sufficiency of the United States tanker fleet (and the industries that support it), with particular emphasis on the availability of militarily useful tankers to meet anticipated national defense requirements.

II. Public Hearings and Comment Procedures

The public hearings are scheduled to be held in Houston, Texas on May 11, 1989, and Long Beach, California on May 12, 1989. The hearings will commence at 8:30 a.m. and end at 5:00 p.m. The Houston hearing will be held in the City Council Chambers, Houston City Hall, 901 Bagby, Houston, Texas. The Long Beach hearing will be held at the Port of Long Beach, Board Room, 925 Harbor Plaza, Long Beach, California 90802.

1. Procedure for Requesting Participation

Interested public participants are encouraged to present their views orally at the hearings. You may make a written request for an opportunity to make an oral presentation at the hearing. The request must be made to the address noted above by May 1, 1989, for the Houston hearing and May 2, 1989, for the Long Beach hearing. In addition, a written synopsis of your comments may be submitted at the same time as your request to speak. If all interested parties cannot be accommodated, these statements will be used to allocate speaking time and ensure that a full range of comment is heard. Please note that the submission of written comments for the public hearings is separate from the request for written comments contained in the March 8, 1989 **Federal Register** Notice.

In addition, the request to speak should contain a daytime phone number where you may be contacted before the hearing. Since it may be necessary to limit the number of persons making presentations, you should be prepared to describe your interest in this proceeding. If appropriate, please explain why you are a proper representative of a group or class of persons that has such an interest; and provide a concise summary of your proposed presentation.

The DOC will notify each person selected to be heard before 5:00 p.m. on May 4, 1989, which is one week prior to the hearings. In addition, the DOC will arrange the presentation times for the speakers. Attendees will be seated on a first-come, first-served basis. Persons selected to be heard should bring 100 copies of their oral presentation on the day of the hearing to the hearing address indicated in the "**ADDRESS**" section of this notice.

In addition, please submit 10 written copies of your oral presentation to the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Attn: Margaret Cornejo, U.S. Department of Commerce, Room H–4886, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377–2593. All comments received will be available for public inspection in the Freedom of Information Records Inspection Facility, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Identify separately any information you consider to be company confidential and submit it in writing, one copy only. We reserve the right to return information if we do not deem it to be business confidential.

2. Conduct of the Hearing

We reserve the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each speaker will be limited to 10 minutes, and comments must be directly related to the section 2424 Crude Oil Export Study.

A Commerce official will be designated to preside at the hearings. Representatives from the Departments of Energy, Interior, and Transportation will also participate in the hearings. This will not be a judicial or evidentiary-type hearing. Only those conducting the hearing may ask questions, and there will be no cross-examination of persons presenting statements.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

April 19, 1989.

[FR Doc. 89–9781 Filed 4–19–89; 2:07 pm]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of the Sablefish Economic Work Group on May 3 and 4, 1989. On May 3 at 10 a.m., the Workgroup will meet in the library of the California Department of Fish and Game, 411 Burgess Drive, Menlo Park, CA, to review and develop economic information for resolving the long-term sablefish inter-gear allocation problem.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue,

Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: April 14, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–9569 Filed 4–20–89; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico and South Atlantic Fishery Management Councils; Corrected Meeting Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

NOAA published and amended agenda for meetings of the South Atlantic Fishery Management Council's Committees and for a joint South Atlantic and Gulf of Mexico Councils meeting. The amended agenda was published in notice at 54 FR 14374 on April 11, 1989.

The notice erroneously stated that all joint discussions scheduled for April 26, 1989, had been cancelled. This correction is to indicate that the other matters scheduled for joint discussion, that is bag limits, quotas for king and Spanish mackerel, a review of unresolved issues related to the Mackerel Amendment #4 and Amendment #5 Options Paper, continue on the agenda for that date.

For further information contact Carrier R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: April 19, 1989.

Richard H. Schaefer,

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

FR Doc. 89–9778 Filed 4–20–89; 8:45 am]

BILLING CODE 3510-22-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 Indonesia

April 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATES: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, 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) 535–9480. 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 sublimits of certain categories in Groups I and II are being adjusted, variously, for carryover, carryover used, carryforward and swing.

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, 1988). Also see 53 FR 24476, published on June 29, 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 agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 18, 1989

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 24, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on April 18, 1989, the directive of June 24, 1988 is being amended to adjust the following sublimits in Groups I and II, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Indonesia:

Category	Adjusted 12 Month Limit [1]
Within Group I:	
340	500,135 dozen.
347/348	942,094 dozen.
351	123,596 dozen.
369–S [2]	549,420 kilograms.
641	1,352,631 dozen.
645/646	393,260 dozen.
647	566,284 dozen.
648	1,418,731 dozen.
Within group II:	
342/642	178,590 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

[2] 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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–9634 Filed 4–20–89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of a Previous Directive Adjusting Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

April 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a sublimit.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For imformation on the quota status of this sublimit, 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 sublimit for Category 341-Y is being increased by application of swing. The fabric group limit was reduced in a previous directive 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, 1988). Also see 53 FR 25526, published on July 7, 1988; and 54 FR 9246, published on March 6, 1989.

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 agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 18, 1989

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 1, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive adjusted limits for 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 April 18, 1989, the directive of March 1, 1989 is amended to adjust the sublimit for Category 341-Y [1], a sublevel of Category 341, to 196,613 dozen[2], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Turkey. The limit for Category 341 remains as adjusted in the March 1, 1989 directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-9635 Filed 4-20-89; 8:45 am]

BILLING CODE 3510-DR-M

Deduction of Overshipment Charges for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

April 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs deducting certain import charges.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

Under the terms of the Memorandum of Understanding dated March 14, 1989 between the Governments of the United States and the United Arab Emirates, textile products in Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates and exported in 1988 in excess of previously established limits shall be charged to the limits established for these categories for the 1989, 1990 and 1991 agreement years.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to deduct import charges, for goods exported in 1988, from charges made to the current limits for these categories. (In order to prevent an embargo, a deduction was made previously from the limit for Categories 347/348.) The amounts deducted shall be charged, in equal amounts, to the limits established for Categories 338/339, 340/640, 341/641 and 347/348 for the 1990 and 1991 agreement years.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 12472, published on March 27, 1989.

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 Memorandum of Understanding dated March 14, 1989, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 18, 1989

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Memorandum of Understanding dated March 14, 1989 between the Governments of the United States and the United Arab Emirates, I request that, effective on April 18, 1989, you deduct the following amounts, for goods exported in 1988, from charges made to the limits established in the directive of March 22, 1989 for cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period January 1, 1989 through December 31, 1989:

Category	Amount to be deducted
338/339	83,914 dozen.
340/640	44,946 dozen.
341/641	6,056 dozen.
347/348	104,831 dozen.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-9636 Filed 4-20-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On December 27, 1988, February 3 and February 10, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 52210, 54 FR 5542 and 6446) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018). No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to

[1] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[2] The sublimit has not been adjusted to account for any imports exported after June 30, 1988.

produce the commodities at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Peeler, Potato, Hand
7330–00–238–8316

Tarpaulin
8340–00–485–3012

Pants, Woman's

8410–01–189–9909	8410–01–189–9926
8410–01–189–9910	8410–01–190–9975
8410–01–189–9911	8410–01–189–9927
8410–01–189–9912	8410–01–189–9919
8410–01–189–9913	8410–01–189–9920
8410–01–189–9914	8410–01–189–9921
8410–01–189–9915	8410–01–189–9918
8410–01–190–9274	8410–01–189–9917
8410–01–190–9271	8410–01–189–9922
8410–01–190–9272	8410–01–189–9923
8410–01–190–9273	8410–01–189–9924
8410–01–190–9276	8410–01–189–9925
8410–01–190–9277	8410–01–190–4257
8410–01–189–9918	8410–01–189–9928
8410–01–190–9278	8410–01–189–9929
8410–01–190–9279	8410–01–189–9930
8410–01–190–9280	8410–01–189–9931
8410–01–190–9281	8410–01–189–9932

Topper, Woman's

8410–01–187–9636	8410–01–187–9646
8410–01–187–9637	8410–01–187–9647
8410–01–187–9628	8410–01–187–9648
8410–01–187–9629	8410–01–187–9649
8410–01–187–9630	8410–01–187–9674
8410–01–187–9631	8410–01–187–9708
8410–01–187–9642	8410–01–187–9697
8410–01–187–9643	8410–01–187–9698
8410–01–187–9644	8410–01–187–9699
8410–01–187–9645	8410–01–187–9700
8410–01–187–9632	8410–01–187–9709
8410–01–187–9633	8410–01–187–9675
8410–01–187–9634	8410–01–187–9676
8410–01–187–9635	8410–01–187–9677
8410–01–187–9650	8410–01–187–9654
8410–01–187–9641	8410–01–187–9655
8410–01–187–9658	8410–01–187–9656
8410–01–187–9659	8410–01–187–9657
8410–01–187–9710	8410–01–187–9682
8410–01–187–9660	8410–01–187–9683
8410–01–187–9661	8410–01–187–9651
8410–01–187–9662	8410–01–187–9652
8410–01–187–9663	8410–01–187–9653
8410–01–187–9664	8410–01–187–9638
8410–01–187–9665	8410–01–187–9639
8410–01–187–9640	8410–01–187–9694
8410–01–187–9692	8410–01–187–9695
8410–01–187–9666	8410–01–187–9696
8410–01–187–9667	8410–01–187–9678
8410–01–187–9668	8410–01–187–9684
8410–01–187–9669	8410–01–187–9685
8410–01–187–9670	8410–01–187–9711
8410–01–187–9671	8410–01–187–9689
8410–01–187–9686	8410–01–187–9690
8410–01–187–9687	8410–01–187–9691
8410–01–187–9688	8410–01–187–9679
8410–01–187–9705	8410–01–187–9680
8410–01–187–9706	8410–01–187–9681
8410–01–187–9707	8410–01–187–9701
8410–01–187–9672	8410–01–187–9702
8410–01–187–9673	8410–01–187–9703
8410–01–187–9693	8410–01–187–9704

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–9632 Filed 4–20–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before May 22, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Compress and Bandage, Camouflaged
6510–00–200–2075
6510–00–200–3080

Shirt, Woman's
8410–01–069–6611
8410–01–069–6612
8410–01–069–6613
8410–01–069–6614
8410–01–069–6615
8410–01–069–6616
8410–01–069–6617
8410–01–069–6618
8410–01–069–6619
8410–01–069–6620
8410–01–069–6621
8410–01–069–6622
8410–01–069–6623
8410–01–069–6624
8410–01–069–6625
8410–01–069–6626
8410–01–069–6627

Beverly L. Milkman,
Executive Director

[FR Doc. 89–9633 Filed 4–20–89; 8:45 am]
BILLING CODE 6820–33–M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 88–2–86CD]

1986 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of final determination.

SUMMARY: The Copyright Royalty Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of royalty fees paid by cable systems for secondary transmissions during 1986.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 540, Washington, DC 20036, (202–653–5175).

SUPPLEMENTARY INFORMATION:

Authority

Section 111(d)(3) of the Copyright Act, as amended August 27, 1986, authorizes the Copyright Royalty Tribunal to distribute annually royalty fees paid by cable systems to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) Any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) Any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under paragraph (1)(A); and

(C) Any such owner whose work was included in nonnetwork programming consisting of aural signals carried beyond the local service area of the primary transmitter of such programs.

This Proceeding

In this proceeding, the Tribunal takes up the distribution of the royalty fees deposited by cable operators for the calender year 1986. In accordance with past procedure, the Tribunal resolved that the 1986 distribution proceeding would be conducted in two phases. In Phase I, the Tribunal would determine the allocation of cable royalties among various program categories of claimants. The Phase I categories were: Program Suppliers (MPAA, Multimedia, NAB), Sports (Major League Baseball, NBA, NHL, NCAA), Noncommercial Television (PBS), U.S. Commercial Television (NAB), Music (ASCAP, BMI, SESAC), Devotional Programs (CBN, PTL, OTGH), Canadian Programs (CBC, CTV), Noncommercial Radio (NPR) and Commercial Radio (NAB).[1] In Phase II, the Tribunal would allocate cable royalties to individual claimants within a program category.

For this 1986 proceeding, there were no controversies in Phase I. All Phase I parties settled based upon the allocations made by the Tribunal in the 1983 cable distribution proceeding. (The 1984 and 1985 Phase I controversies were similarly settled on the basis of the 1983 allocations.)

In Phase II, there was one controversy. Within the Program Suppliers categories, three parties advanced claims which, when combined, exceeded 100% of the category. The three parties were: the Motion Picture Association of America, Inc., (MPAA), Multimedia Entertainment, Inc. (Multimedia), and the National Association of Broadcasters (NAB).

MPAA claimed 99.3% of the Program Suppliers category, while proposing that NAB be awarded 0.38%, and Multimedia be awarded 0.32%. Multimedia claimed 0.975% of the Program Suppliers category, while proposing that MPAA be awarded 98.225%, and NAB be awarded 0.8%. NAB claimed 0.8% of the Program Suppliers, while proposing that MPAA be awarded 98.225% and Multimedia be awarded 0.975%.

Background and Chronology

Seven hundred and twenty-one (721) individual or joint claims were filed with the Tribunal for the 1986 cable royalty fund. On December 15, 1987, the Tribunal published a notice directing all claimants to inform the Tribunal by February 4, 1988 whether any controversies existed concerning the distribution of the 1986 cable copyright royalty fees. 52 FR 47626.

In response to requests filed by the claimants, the Tribunal twice extended the time to file comments concerning a controversy, first to March 4, 1988, then to April 15, 1988. *Order*, dated February 4, 1988; *Order*, dated March 8, 1988.

Based upon written comments filed April 15, 1988, the Tribunal concluded that controversies existed regarding the distribution of the 1986 cable copyright royalty fees, both in Phase I and in Phase II of the proceeding, effective April 21, 1988. At the same time, the Tribunal ordered a partial distribution of the 1986 cable fund. 53 FR 13144 (April 21, 1988).

The filing of written direct cases in Phase I was originally scheduled for August 5, 1988, but was delayed twice at the request of the parties to facilitate settlement negotiations and for delays in the production of evidence due to the U.S. Court of Appeals' decision in *Cablevision* versus *MPAA, et al. Order*, dated July 11, 1988; *Order*, dated September 30, 1988.

On October 12, 1988, the Tribunal received a motion from all Phase I claimant groups informing the Tribunal that they had reached an agreement regarding the Phase I allocations for five of the claimants groups—U.S. Commercial Television, Music, the Devotional Programs, the Canadian Programs, and Noncommercial Radio—and asking the Tribunal to adopt the agreed-upon allocations. The allocations the parties agreed to were the same percentages allocations as those for the 1983–1985 cable royalty funds.

On December 2, 1988, the Tribunal was notified that Program Suppliers, Sports and Public Broadcasting Service had reached a settlement of their controversy, which was confirmed at the scheduled hearing, December 5, 1988. Consequently, all controversies in Phase I were resolved. The Tribunal adopted the agreed-upon allocations, and ordered another partial distribution of the 1986 cable royalty fund. *Order*, dated December 5, 1988.

On February 6, 1989, the Phase II claimants, MPAA, Multimedia and NAB, filed their written direct cases. The hearing of the direct cases took place on February 13, 14, 15, and 16, 1989.

Phase II rebuttal cases were filed February 27, 1989, and hearing of the rebuttal cases took place in March 2, 6, 7, and 8, 1989. The record in the proceeding was closed March 17, 1989.

The Program Suppliers claimants filed their Proposed Findings of Fact and Conclusions of Law on March 24, 1989. Reply Proposed Findings of Fact and Conclusions of Law were filed on March 31, 1989.

Findings of Fact

Previous Findings. The Tribunal took evidence regarding allocations among MPAA, Multimedia and NAB in the Program Suppliers category in the 1979, 1980, 1982, 1983, 1984 and 1985 cable distribution proceedings. All the findings of fact of these proceedings are hereby consolidated by reference into the 1986 cable distribution proceeding final determination. 47 FR 9879; 48 FR 9952; 49 FR 37653; 51 FR 12792; 52 FR 8408; 53 FR 7133; 53 FR 11895.

The claimants. MPAA is a trade association which represents 99 producers and/or syndicators of syndicated movies, television series and specials. MPAA Ex. 1. Collectively, the 99 claimants seek the cable royalties attributable to 6,229 different syndicated series, movies and specials broadcast on 113 commercial television stations which were retransmitted by cable systems in 1986 and whose viewing was measured by a Nielsen study commissioned by MPAA. MPAA Ex. 6.

Multimedia is the producer and syndicator of the following programs: "Donahue"—261 hours of news/interview programs, including 210 original programs, and 51 repeat programs; "Sally Jessy Raphael"—261 half-hours of interview/talk programs, including 236 original programs, and 25 repeat programs; "New Music City U.S.A."—52 half-hour country music programs, including 25 original programs, and 27 repeat programs; "Young People's Specials"—10 half-hour children's features: "Runaway to Glory," "Nicky and the Nerd," "Buddies," "Umbrella Jack," "That Funny Fat Kid," "Molly's Pilgrim," "The Horrible Secret," "My First Swedish Bombshell," "Little Arliss," and "Charlie's Christmas Secret" (four of these were first-run programs in 1986); "Country Music, Entertainment and International Specials"—ten primetime country, music, entertainment and international specials, including, $20th Annual Music City News Country Music Awards," "6th Annual National Song Writers Awards," "Family affair: Osmonds' 25th Anniversary," "Statlers' Christmas Present," "Public People, Private Lives," Marty Robbins: Super Legend," "Dreesen Street (original and Repeat), "New Stars of '86," "Spacesbridge: A Citizens' Summit," and "Citizens' Summit II: Women to Women" (eight of these were first-run programs in 1986). Multimedia-owned broadcast stations also produced and syndicated its own programming including: "Redscene,"

[1] The parties mentioned in parenthesis are the major claimants in each category. The listing is for the reader's edification, and is not intended to be a complete list.

"Ruth Lyons: Portrait of A Legend," and "Cumberland College Christmas Program." Test. of Richard Thrall, pp. 3–4, 16; Multimedia Ex. 14.

NAB is a trade association which represents 66 television broadcast stations. Collectively, the 66 stations seek the cable royalties attributable to 139 programs which the stations produced and which were syndicated to and broadcast on other stations in 1986. NAB Ex. II–2 (amended). NAB categorized its programs, generally, as coaches shows, specials and series with regional appeal, sports programs, news/talk/public affairs programs, children's programs, documentary and instructional programs, parades, pageants and special events, and entertainment/talk shows. Test. of Richard Ducey, pp. 6–15.

MPAA's claim. As a part of its case for several distribution proceedings, MPAA has commissioned a special Nielsen study to prove its entitlement. 47 FR 9880; 48 FR 9554; 51 FR 12794; 52 FR 8416; 53 FR 7133. The study measures the hours of distant signal nonnetwork programming which are viewed by cable households. *Id.*

For this proceeding, MPAA selected to be included in the Nielsen study all U.S. commercial television broadcast stations which reached a minimum average of 80,000 Form 3 cable subscribers, as determined from the statement of accounts filed by the cable systems as of November, 1987 for the two semiannual accounting periods of 1986. Test. of Allen Cooper, p. 6. A total of 113 commercial stations met MPAA's criteria: 70 network-affiliates and 43 independent stations. MPAA Ex. 3.

Once the sample broadcast stations are selected, the study is based on data compiled by the A.C. Nielsen Company from Nielsen Station Index (NSI) diaries distributed to approximately 950,000 television households, including both cable subscribers (from Form 1, 2, and 3 systems) and non-subscribers, during six four-week measurement periods, or "cycles." During 1986, these cycles encompassed January 2–29, January 30–February 26, May 1–28, July 10–August 6, September 25–October 22 and October 30–November 26. Test. of Allen Cooper, p. 5. For the four principal cycles, February, May, July and November, 436,000 diaries were returned, reviewed by the Nielsen Company and accepted as accurate, and of those, 230, 839 or 52.94% were from cable households. Tr. 8.

The scope of the 1986 Nielsen study is greater than the 1985 Nielsen study. MPAA lowered the threshold of those stations which would be included in the study from stations reaching 100,000 subscribers to stations reaching 80,000. Consequently, 113 commercial stations were measured as opposed to 104 commercial stations in 1985. According to MPAA, these 113 stations accounted for more than 95% of all distant cable viewing of U.S. commercial programs by Form 3 cable systems, versus its estimate for 1985 that the 104 commercial stations accounted for 86.5% Test. of Allen Cooper, pp. 8–9; 1985 Test. of Allen Cooper, pp. 3–4.

The cable household viewing hours found by the MPAA-commissioned Nielsen study attributable to the programs of each of the three Program Suppliers claimants were:

		(Percent)
MPAA	2,618,283,918	99.289
NAB	10,276,176	.390
Multimedia	8,463,698	.321

Test. of Allen Cooper, p. 10; NAB Ex. 9RX; MPAA Ex. 12R.

MPAA and NAB disputed the ownership of 11 programs, three of which had reported cable household viewing hours of 188,231. MPAA Ex. 16R (revised). If NAB were given the credit for those three programs, instead of MPAA, the percentages for each of the three claimants would be: MPAA—99.282% NAB—0.397%, Multimedia—0.321%.

In the 1984 distribution proceeding, the Nielsen viewing data for the three parties were: MPAA—99.330%, NAB—0.404%, Multimedia—0.266%. 51 FR 8419. In the 1985 distribution proceeding, a proceeding in which NAB did not participate, the relative Nielsen data for MPAA and Multimedia were: MPAA—99.74%, Multimedia—0.26%. 53 FR 7133.

When asked by counsel for Multimedia whether the Nielsen viewing data are "pin-point accurate" or yield the "actual number of cable households" that viewed the distant programming, MPAA witness Cooper said that any Nielsen statistic is based upon estimates, and the estimates are subject to error. Tr. 707. Even for the range of probable error to be correct, it would need to assume a perfectly representative sample and that each participant in the sample complied completely with the survey requirements, which, Cooper stated, never happens. Tr. 708. The value of the Nielsen data, Cooper stated, is that they are relied on by stations, programmers and advertisers, and understanding their limitations, "they are fine for the purposes of constructively making decisions." *Id.*

In the 1985 proceeding, MPAA argued that the Tribunal should employ the Nielsen study as the sole means of determining the allocation among claimants in the Program Suppliers category, because it felt that it provided the only objective standard of measuring the relative values of competing claims. 1985 Test. of Allen Cooper, p. 8. This argument was rejected by the Tribunal. 53 FR 7136. In this proceeding, MPAA argues that the Nielsen study should be the Tribunal's primary consideration, and that the weight to be afforded the evidence of the other claimants should be so slight as to result in an allocation virtually the same as that which would have obtained from a strict application of the Nielsen data. Test. of Allen Cooper, pp. 3–4, 12.

Responding to the Tribunal's statement in the 1985 proceeding that credit would be given when it is shown that a claimant's programs have been either unmeasured or undermeasured by the Nielsen study, MPAA submitted a list of more than 820 titles (mostly movies and a few series) aired in over 1800 broadcasts which, because the programs were broadcast either by a non-sample station or outside the measurement period, were not measured at all in the Nielsen study. MPAA Ex. 8; Test. of Marsha Kessler, pp. 2–3. MPAA did not attempt to obtain a comprehensive list of all unmeasured MPAA-represented programs. The listed programs were only those which happened to be sent by some program suppliers during the MPAA certification process. Tr. 123. A second list of 21 television series was also submitted by MPAA, which although measured by the Nielsen study, was alleged to have been undermeasured. Both lists were analyzed by MPAA for total subscriber-incidents (that is, the number of broadcasts times the numbers of subscribers reached) outside of the Nielsen measurement periods. MPAA Exs. 9, 10.

NAB's claim. In support of its claim, NAB presented two exhibits. The first exhibit was a copy of a questionnaire on programs syndicated in 1986 which the NAB-represented broadcast stations filled out at NAB's request. NAB Ex. II–1. The second exhibit was a listing of the syndicated programs which the broadcast stations claim. NAB Ex. II–2 (amended). The listing was based upon the response to the questionnaire. Test. of Richard Ducey, p. 2. To assure the accuracy of the questionnaire data, NAB research assistants re-contacted the stations by telephone to confirm and verify their responses. Tr. 363–64.

Exhibit II–2 listed the titles of the syndicated programs, the station which originated the program, the stations which carried the programs, and whether the program was a series or special. Ex. II–2 (amended). NAB underlined which carrying stations were imported as a distant signal by Form 3 cable systems in 1986. *Id.* Those stations which were not underlined were confirmed by NAB to have been imported as a distant signal by at least one Form 1 or Form 2 cable system in 1986. Tr. 362–63.

In addition, NAB presented Richard Ducey, senior Vice President and head of the NAB Research and Planning Department to give testimony concerning the marketplace value of the NAB-represented programs. Test. of Richard Ducey. Ducey described 58 of the 139 programs claimed by NAB as sports programs, either actual live sports games, such as state and regional high school or amateur basketball, football, hockey and track and field championships, wrestling matches, bowling tournaments, horse races, and auto races; or programs about sports, such as college or professional coaches' shows. *Id.*, pp. 6–15. In Ducey's opinion, sports programs are especially attractive to subscribers. Tr. 392.

In addition, Ducey emphasized that most of the NAB programs have special interest to cable subscribers within the state or region in which they are retransmitted on a distant signal basis. The type of shows, Ducey stated, which have this kind of appeal are coaches' shows and regional sports programs, news programs, state lotteries, state fairs, and beauty pageants and political programs. Tr. 368–371, 395; Test. of Richard Ducey, pp. 6–15. Finally, Ducey cited one program "INN Evening News," which had 117 affiliated stations, as a program with national interest. Test. of Richard Ducey, p. 17; NAB Ex. II–2 (amended). Concerning all of NAB's represented programs, whether sports or non-sports, whether regional or national, Ducey described them as timely, fresh and first-run programs having more appeal than reruns. *Id.;* Tr. 387–89.

MPAA contested NAB's claim to represent 11 programs, asserting that they had been syndicated by MPAA-represented syndicators. Reb. Test. of Marsha Kessler, pp. 8–9. The programs in question were: "The Boy King," claimed by All American Television, "Inday News," claimed by LBS, "Breast Cancer: My Body, My Life," claimed by Twentieth Century-Fox, and "Public Women, Private Men," "Drop Everything and Read," "When I Was Your Age," "Notes To My Parents," "The Crossing," "No Secrets," "Street Shadows," and "Origins," claimed by Group W Westinghouse. *Id.*

Only three of the eleven programs were measured by the Nielsen study to have measurable cable household viewing hours. MPAA Ex. 16R. According to the settlement agreement among MPAA-represented program suppliers, those suppliers who sign with MPAA agree to be compensated solely on the basis of the Nielsen study, so that programs they own which receive zero viewing hours, or which were not measured in the Nielsen study will not receive compensation from MPAA from the Tribunal allocation for MPAA-represented program suppliers. Tr. 572, 574, 602.

MPAA witnesses conceded that MPAA's challenge to NAB's right to represent "Breast Cancer; My Body, My Life" might not be correct, that Twentieth Century-Fox's "It's My Body, It's My Life" is a different program than CBS' "Breast Cancer: My Body, My Life." Tr. 604–610, 778–779.

Group W Westinghouse signed to be represented for its programs by both NAB and MPAA. Reb. Test. of Marsha Kessler, p. 9.

MPAA drew concessions from NAB's witness on the issue of diversity programming, by demonstrating that many programs of regional appeal, such as the Hayden Fry Program and the Tom Osborne Show, two coaches shows retransmitted to cable systems in Iowa and Nebraska, respectively, are also available locally from over-the-air broadcast stations. MPAA Ex. 16X; Tr. 430–435. NAB countered with examples where programs are not duplicated by local broadcasts, such as the Montana program, "Face the State," which is available to Kalispell and Williston residents only by means of distant signal importation. Tr. 391.

NAB. sought credit for asserted undermeasurement of its specials in the Nielsen study. NAB Prop. Findings, par. 19. Not including the NAB–MPAA contested specials, NAB represented 82 specials for 1986. NAB Ex. II–2 (amended). These 82 specials were broadcast on a total of 395 television stations which were also transmitted by Form 3 cable systems. 116 of these 395 television stations, or 29.36% were among the selected commercial stations in the Nielsen study. (In the previous two sentences, many stations were counted more than once, because they carried more than one NAB-represented special). *Id.* This compares to the overall selection rate of 113 commercial stations chosen from 437 stations which were retransmitted by Form 3 systems, or 25.9%. Reb. Test. of Richard Thrall, p. 5; Test. of Allen Cooper, p. 3. 12 of the specials which were on the 116 stations were actually measured by the Nielsen study because they were aired during the sweep period, but it was not made part of the record how many times those 12 specials were measured; MPAA Ex. 16R (revised). MPAA noted that NAB's presentation lacked the frequency of the airings of NAB's programs, and the cable systems which carried them, and their subscribership. MPAA Reply Findings, p. 34; NAB Direct Case.

Multimedia's Claim. Multimedia seeks an increase in its award from 0.825%, which it received in 1985, to 0.975%. Multimedia Prop. Findings, p. 38. Two-thirds of Multimedia's proposed increase is based on what Multimedia claims as changed circumstances. One-third is based on Multimedia's assertion that WTBS already compensates those syndicators who supply programs to it with higher license fees, so that those syndicators incur far less harm to them than do syndicators who do not supply WTBS, such as Multimedia. *Id.*, pp. 4–5.

Changed circumstances—"Donahue" was broadcast on 209 broadcast stations in 1986, as compared to 206 in 1985, 98 of which were retransmitted by Form 3 cable systems on a distant signal basis. Multimedia Exs. 15, 3R. "Donahue" garnered 7,315, 294 household viewing hours in the Nielsen study versus 5,872,269 in 1985, an increase of approximately 24.6%. MPAA Ex. 7. "Donahue" received daytime broadcast ratings in 1986 of 8, 7, 7, 7 for the four sweep periods, as compared to daytime ratings of 7, 6, 6, 6 for the same periods in 1985. Multimedia Ex. 5. The daytime share for "Donahue" was 31, 31, 28, 31 for the four sweep periods in 1986, as compared with 28, 30, 27, 28 for the same sweep periods in 1985. *Id.*

Multimedia performed an advertsing analysis comparing how much revenue "Donahue" generates for its affiliates with the total of all nonnetwork, nonlocal news spot sales. Multimedia Ex. 4 (corrected). Multimedia chose 21 selected markets, representing 13.93% of the U.S., and, projecting those markets to the total of all U.S. markets, found that "Donahue" generated 2.18% of all 1986 nonnetwork, nonlocal news spots sales, as compared to 1.61% for 1985. *Id.* MPAA analyzed the selected 21 markets and found that "Donahue" in those markets had an average share 27.5% higher than the average share for "Donahue" for all television markets. MPAA Ex. 14R. Since advertising revenues are tied to the share a program gets, use of higher share markets tends to distort the advertising study,

according to MPAA. Tr. 736. MPAA performed its own analysis using the same format and group of markets contained in Multimedia's 1985 study and reached an advertising figure of 1.46%. MPAA Ex. 12X; Tr. 287–88.

"Sally Jessy Raphael"—After having its first year of syndication in 1985, Sally Jessy Raphael increased the number of station affiliates from 70 to 84 in 1986, 46 of which were retransmitted by a cable system on a distant signal basis. Test. of Richard Thrall, p. 9; Multimedia Ex. 3R; Tr. 301. "Sally Jessy Raphael" garnered 839,489 cable household viewing hours, compared to 298,912 in 1985, an increase of 180.85%. MPAA Ex. 7. In 1986, "Sally Jessy Raphael's" average NSI daytime total households and persons increased 90%, ratings rose 17% and audience share increase 7%. Test. of Richard Thrall, p. 3. However, during 1986, daytime total households for "Sally Jessy Raphael" declined from 1,605,000 to 1,395,000 from February to November, despite an increase in the number of stations. Similarly, daytime total persons for "Sally Jessy Raphael" declined from 1,856,000 to 1,533,000 from February to November. Multimedia Ex. 6. Finally, Multimedia offered an advertising study for "Sally Jessy Raphael" similar to the one performed for "Donahue" which yielded 0.38% of all advertising revenues for all nonnetwork, non-local news spots sales. Multimedia Ex. 8 (corrected).

For all other Multimedia programming, Multimedia proposed no finding of changed circumstances, stating, for example, that its country music and entertainment special viewership "held steady." Test. of Richard Thrall, p. 14. According to the Nielson study, cable household viewing for all other Multimedia programming rose from 217,256 to 308,915, or 42.19%. MPAA Ex. 12R; MPAA Ex. 7.

The time for all Multimedia country music and entertainment specials on all broadcasting stations during 1986 was 45.73 hours, versus 41.1 hours in 1985. Multimedia Ex. 15. Overall, the total hours occupied by all Multimedia programming in a typical week amounted to 1,381.55, representing a 3% increase over 1985. Tr. 241; Test. of Richard Thrall, p. 17. MPAA attempted to rebut Multimedia's time estimate on the ground that Multimedia's estimate relies on all its programs being broadcast the maximum number of times possible throughout the year. MPAA estimated a reduction in total Multimedia time of approximately 100 hours per week based on the number of broadcasts reported by Arbitron SPAs. MPAA Ex. 13R.

Undermeasurement—In addition to asserting changed circumstances, Multimedia renewed its claim from last year that its special were undermeasured by the Nielson study, and added this year that its regularly scheduled series, such as "Donahue," and "Sally Jessy Raphael," were also undermeasured Multimedia Ex. 1R, 2R, 3R.

The Nielson study measured 113 commercial stations out of 437 commercial stations which were retransmitted by Form 3 cable systems, or 25.9%. Reb. Test. of Richard Thrall, p. 5; Test. of Allen Cooper, p. 6. Of the 98 commercial stations which carried "Donahue," and which were retransmitted by Form 3 cable systems, 25 were stations measured in the Nielson study, or 25.5%. Multimedia Ex. 3R. Of the 46 commercial stations which carried "Sally Jessy Raphael," and which were transmitted by Form 3 cable systems, 11 were stations in the Nielson study, or 23.9%. *Id.*

Concerning specials, of the 82 commercial stations which carried "My First Swedish Bombshell" and which were retransmitted by Form 3 cable systems, 22 were stations measured by the Nielsen study, or 26.8%. *Id.* Similarly, "20th Annual Music City News Country Music Awards" was on 22 measured Nielsen stations out of 85 distantly-carried commercial stations, or 25.9%. *Id.*

In another exhibit, Multimedia presented the number of times its specials aired on all broadcast stations in the U.S., 2,955 and divided that figure by the number of time its specials were on a selected Nielsen station during a measured sweep period, 112, and proposed the resulting figure, 3.8% as a valid indicator of its asserted undermeasurement. Multimedia Ex. 2R. MPAA responded that Multimedia's denominator in the fraction was not the relevant denominator because it included all broadcast stations regardless of whether they were retransmitted by Form 3 cable systems on a distant basis. MPAA Prop. Findings, p., 12. MPAA eliminated nonrelevant broadcasts for two of Multimedia's specials for which there was record evidence, so that "6th Annual Song Writers Award" was measured 7.9% of the time it was broadcast on stations retransmitted by Form 3 cable systems, rather than 5.1%, and "20th Annual Music City News Country Music Awards was measured 8.25% of the time, rather than 5.17%. *Id.* p. 13. MPAA did not perform any more analyses of this kind for the other Multimedia specials, not did it provide an overall percentage.

WTBS—Multimedia introduced statements submitted by TBS to the SEC and the FCC in which TBS states that because of WTBS's special position in the cable market, it typically pays program suppliers a licensing fee significantly in excess of the market rate for programming aimed at the Atlanta market alone. Reb. Test. of Richard Thrall, pp. 11–12. Specific examples of significant increase in the license fees paid for "Three Stooges" and "The Andy Griffith Show" were given. *Id.* TBS estimated that it pays $10 million per year more than the average production and new costs of an independent station in the 11–20 television markets. *Id.*, p. 14. It is Multimedia's position that these additional $10 million fees negate the harm program suppliers to WTBS are alleged to incur, and that those who do not syndicate to WTBS, such as Multimedia, should get a correspondingly higher share of the program suppliers royalties. Multimedia Prop. Findings, pp. 33–36.

MPAA introduced a cross examination exhibit to show that the 297.85% increase from 1978 to 1986 in license fees for WTBS to air "The Andy Griffith Show" was less than the increases independent stations incurred nationwide from 1978 to 1986 (379.3%) and less than independent stations in the 11–20 television markets incurred (612.87%). MPAA Ex. 17RX. Additionally, Multimedia's witness conceded that TBS' statement compared WTBS' costs for 1986 to a typical station's costs for 1983. Tr. 1075–76. When the relevant year's costs were compared, 25% of the independent stations in 1986 had production and news costs of at least $12 million, compared to WTBS' cost of $15.2 million MPAA Ex. 17RX.

MPAA argued that Multimedia's award should be reduced on the harm factor, rather than program suppliers to WTBS, because Multimedia has avoided the harm caused to its programs by distant signal importation by not selling any of its programs to the superstations. MPAA Prop. Findings, p. 15; Tr. 1095–96. MPAA submitted an exhibit analyzing "Donahue," "Sally Jessy Raphael," "20th Annual Music City News Country Music Awards," and "6th Annual Song Writers Awards", showing that although these shows were carried cumulatively by 250 broadcast which were retransmitted by cable systems on a distant signal basis, those cable systems accounted for only about $4 million of the $118.7 million which were deposited by cable systems.

Reb. Test. of Marsha Kessler, p., 2; MPAA Exs. 1R–5R; Tr. 559.

Multimedia also alleged that TBS, knowing that MPAA distributes its royalty shares based strictly on the Nielsen study, can schedule its programs on WTBS during Nielsen sweep periods so it can garner extra income for cable copyright royalties. Multimedia gave the example of the Goodwill Games, which, if scheduled during June, outside of a sweep period, would get no cable royalties, but scheduled as it was during July, would be getting approximately $2 million in cable royalties. Tr. 968–69. Upon request from the Tribunal, Multimedia submitted the schedule of all previous summer Olympic Games, which showed that the 1976 and 1980 summer Olympics were scheduled in July. Multimedia submission, dated March 13, 1989.

Conclusions of Law

MPAA, Multimedia and NAB have shown entitlement to 98.5%, 0.825% and 0.675% of the Program Suppliers Phase I allocation, respectively.

Our starting off point in analyzing the three Phase II program suppliers claimants is our award to these claimants from the last previously litigated proceeding. Our awards to these claimants were: MPAA—98.475%, Multimedia—0.825%, NAB—0.7%. These previous awards were arrived at by the Tribunal primarily on the basis of the special Nielsen study of cable household viewing of distant signals and other evidence going to the five factors employed by the Tribunal in analyzing a claimant's claim: harm to the claimants, benefit to the cable operator, marketplace value, and to a lesser degree, quality and time.

In this proceeding, one alleged insufficiency of the Nielsen data, whether the Nielsen study undermeasured any of the three claimants overall programming, was especially contested. The other important issues were whether any claimant could show changed circumstances from 1985; whether the claimants had improved on weaknesses in their cases perceived by the Tribunal; certain programs that were claimed by more than one party; and factors of harm, benefit to cable operators, and marketplace value.

Concerning the Nielsen study, MPAA continued to make improvements in its reliability. It expanded the number of commercial stations in the study, by including stations which reached 80,000 subscribers rather than last year's cut-off of 100,000. This resulted in an increase in the number of commercial stations measured by the study from 104 in 1985 to 113 in 1986. In addition, MPAA cleared up one point of confusion. The Tribunal had accepted Multimedia's criticism that the Nielsen data does not measure the viewing of cable subscribers who subscribe to Form 1 or Form 2 cable systems. MPAA established in this proceeding, however, that while the choice of which broadcast stations should be studied is restricted to their distant signal carriage by Form 3 systems, once that choice is made, the Nielsen study measures the viewing of those broadcast stations by all cable households, including households subscribing to Form 1 or Form 2 systems.

The Nielsen data yielded a relative measure of the programs of the three program suppliers as follows: MPAA—99.289%; NAB—0.390%; Multimedia—0.321%. This represented a decrease for NAB from 0.404% to 0.390%, or 3.5%, and an increase for Multimedia from 0.260% to 0.321%, or 23.5%.

To obtain these final Nielsen figures, it was necessary to resolve the question of the ownership of 11 contested programs between MPAA and NAB. One program, "Breast Cancer, My Body, My Life," was resolved at a hearing, where it was conceded by MPAA that, in fact, two different programs were being discussed and there was no conflict at all. Concerning the other ten, it was represented to the Tribunal that MPAA represented the syndicator of the program and NAB represented the producer. As we established in the 1984 cable distribution proceeding, as between the syndicator and the producer, the Tribunal will award the royalties to the syndicator, so here too, the Tribunal has determined these programs belong to MPAA's claim. *1984 Cable Royalty Distribution Proceeding*, 52 FR 8408, 8410, 8418 (March 17, 1987).

NAB argued that there existed a difference in this proceeding, that although MPAA sought the credit for these programs, the majority of them would not get any payment from MPAA under its own internal distribution system, whereas if NAB were recognized to be the proper representative for those programs, each one of them would get some compensation from NAB. The Tribunal believes, that although NAB's point has a certain appeal, the seeming inequity stems from a choice the syndicator made when he chose to be represented by MPAA, and to accept MPAA's distribution method. If, however, the syndicator feels penalized by MPAA's system, he can come directly to the Tribunal in Phase II as Multimedia does.

Concerning Group W Westinghouse, the Tribunal is particularly troubled by a circumstance in which Group W could possibly be compensated twice. In this case, Group W is assigned this year by the Tribunal to MPAA for the reason that it has received compensation from MPAA and has agreed to MPAA's distribution formula. This does not preclude Group W from filing with either MPAA or NAB in a future proceeding, but it must clearly choose.

Challenges to the Nielsen study in the proceeding were based primarily on allegations of undermeasurement. MPAA argued that the credit the Tribunal has given the other claimants in the past for undermeasurement of their programs was not warranted, because MPAA's programs were equally undermeasured. To advance this argument, MPAA gave examples of how much product its represented group has on the nonmeasured stations, and during the nonmeasured periods of the year. However, the Tribunal always assumed that MPAA had a substantial amount of its programs outside of the Nielsen study, for that was the necessary assumption the Tribunal had to make in order to project the results of MPAA's Nielsen study to the entire year. For MPAA to show that its programs have been undermeasured, it would have to show that its relative share of programming in the unmeasured periods exceeds its 97.5% (excluding unclaimed programs) relative share of programming in the measured period, or to show that the other claimants were overmeasured.

Overall, however, we consider that MPAA has continued to improve the Nielsen study, its claimants maintained their strong standing in the Nielsen data, and has thus demonstrated the marketplace value of its programs.

Concerning Multimedia, the statistical way in which Multimedia set out to demonstrate undermeasurement of its specials in this proceeding is different from the way it attempted to show undermeasurement in the last proceeding, and therefore our analysis has to be different. In the 1985 proceeding, Multimedia's exhibit on undermeasurement included one factor that has been left out of this year's exhibit—cable subscribership. Cable subscribership is a factor, because not all distant retransmissions of broadcast signals have equal impact.

This year, Multimedia first alleged that its series and specials were undermeasured simply by the fact that ¾ of their airings took place on broadcast stations not selected to be in the study. However, as our findings demonstrate, the Nielsen study only chose ¼ of all relevant broadcast stations to measure, so that

Multimedia's programs received approximately average treatment.

Multimedia's second exhibit on undermeasurement was misleading because it included many nonrelevant broadcast stations, that is, stations that were not retransmitted by a Form 3 cable system.

It could not be shown from Multimedia's two exhibits whether there was undermeasurement. Our conclusion of the record is that there was not. This is not a contradiction from our finding of last year that there was undermeasurement. The basic criticism advanced by critics of the Nielsen study is that for small claimants it can be capricious. One year, it may undermeasure, the next year, it can overmeasure. Therefore, a claimant must continue to prove undermeasurement in order to get credit for it.

Regarding the other indicia of Multimedia's claim, we perceive two indications of changed circumstances, the improvement in "Sally Jessy Raphael" and the improvement in the Nielsen study. "Sally Jessy Raphael" was syndicated to more stations in 1986, 46 of which were retransmitted by Form 3 cable systems. Improvements for "Sally Jessy Raphael" were reflected in the Nielsen data. Overall, the Nielsen data for all Multimedia programming improved Multimedia's relative share by 23.5%.

We do not consider that there was changed circumstances for "Donahue" or for the other programs belonging to Multimedia. For "Donahue," the changes in ratings tend to prove that "Donahue," remains strong, but are not such as to warrant a finding of changed circumstances. Multimedia's advertising and time exhibits were sufficiently impeached by MPAA to preclude any finding of changed circumstances. The time study included many broadcast stations which were not retransmitted by any cable system on a distant signal basis. So improvements, if there were any, in time on the air might not be so for distant signal cable retransmissions. For the other programming, Multimedia did not allege changed circumstances.

On the issue of WTBS, Multimedia presented submissions by TBS to the SEC and the FCC purporting to show that TBS pays program suppliers a premium for their programs because of the special position station WTBS has in the cable market. However, TBS' submissions were essentially out-of-court statements; Multimedia's witness could not answer for the factual truth of the statements contained in them. MPAA's cross examination exhibits were successful in impeaching the allegations contained in TBS exhibits, so the Tribunal could not give them credit. Multimedia's argument that the Tribunal should find that program suppliers who syndicate to WTBS incur no harm because of the alleged premiums they get from WTBS was not proved. Nor could we find that WTBS intentionally schedules its programs, such as the Goodwill Games, during sweep periods for cable royalties, because many other Olympics have been scheduled during July.

On the contrary, we are generally persuaded by MPAA's showing that Multimedia has used self-help to avoid harming its distribution of its programs by not selling to the broadcast stations with the most cable retransmissions. To this extent, the Tribunal believes that Multimedia's award should be somewhat closer to its Nielsen figure.

It should be noted that although we have stated numerous times in the past that the Nielsen study is the starting point, it is obvious from a reading of our past Phase II decisions that the awards have never been based upon a strict application of Nielsen figures. In Phase II, both Multimedia and NAB have long received awards which are several times higher than indicated by Nielsen data. At the same time, past increases or decreases in Nielsen have not resulted in the same corresponding percentage of increase or decrease in Multimedia or NAB awards. See, for example, the 1982 and 1984 cable distribution proceedings. Such changes in Nielsen are but one factor in determining changed circumstances. Similarly, this year the Tribunal declines to apply directly Nielsen gains absent consideration of other factors to elevate changed circumstances.

In conclusion, regarding Multimedia, we believe that Multimedia's 23% improvement in the Nielsen study, which reflect, among other things, the improvement in "Sally Jessy Raphael" is offset by our finding that there was no undermeasurement of Multimedia's specials in 1986, and that Multimedia incurs somewhat less harm than other program suppliers who syndicate to the broadcast stations with greater cable retransmissions. Consequently, the Tribunal has determined to award Multimedia 0.825%, the same as in the last proceeding.

Concerning NAB, NAB has improved on the weaknesses in its case which the Tribunal perceived in the 1984 proceeding. Whereas in the 1984 proceeding, NAB could not represent to the Tribunal that each one of the broadcast stations listed in Exhibit II–2 were retransmitted by at least one cable system on a distant signal basis, this year it was able to. Similarly, NAB took extra steps to confirm and verify the information it had gathered from its represented stations.

NAB was also criticized in the 1984 proceeding for offering no proof of the marketplace value of its represented programs. The Tribunal particularly noted that NAB's programs change from year to year so that previously shown marketplace value for other program could not suffice to establish marketplace value for the new programs. NAB produced a witness this year to address the marketplace value of NAB's programs. However, while continuing to credit NAB for some value to its programs meriting an award higher than its Nielsen share, the Tribunal has determined to adjust NAB's share slightly downward from 0.7% to 0.675%, based primarily on a lack of proof that the regional programs have as special an appeal to particular audiences as NAB's witness said they do, and based upon MPAA's showing that these regional programs are also available over-the-air from regional broadcast networks.

The downward adjustment in NAB's award is not related to any fluctuation in its Nielsen share. As previously noted, the Tribunal has never taken the statistical result of the Nielsen study as having pin-point accuracy. The 3.5% decline for NAB, from 0.404% to 0.390%, was considered by the Tribunal to be de minimis.

Concerning NAB's assertion of undermeasurement of its specials in the Nielsen study, we first analyzed whether the NAB programs were on selected broadcast stations more or less than the statistical average. Since the Nielsen study measured 113 out of 437 stations, or 25.9%, NAB's result of 116 out of 395 stations, or 29.4%, being measured, does not show any undermeasurement.

However, it would be of no help for a special to be on a selected Nielsen station if it was aired outside of the sweep periods. 12 of NAB's programs were actually measured by the Nielsen study, but we do not know if they were measured once or more than once. We are inclined to conclude, however, that NAB's specials were probably undermeasured. To that extent, some amount of undermeasurement has already been built into NAB's award for the past several proceedings. However, our conclusion is frustrated by a lack of solid evidence. As we said previously on the issue of undermeasurement, to show it requires putting in the record the broadcast stations which aired the programs, when, whether the programs were aired within or outside a Nielsen

sweep period, which cable systems carried them, and their subscribership.

Allocations

Pursuant to the Phase I settlement, the Tribunal has adopted the following allocation to categories of claimants in Phase I of the 1986 cable copyright royalties fees available for distribution.

After subtracting the stipulated award to National Public Radio of 0.18% of the entire fund.

Category	Basic	3.75 percent	Syndex
Program suppliers	67.10	72.00	95.00
Sports	16.35	17.50	0
Noncommercial television	5.20	0	0
Commercial television	5.00	5.00	0
Music	4.50	4.50	4.50
Devotional claimants	1.10	0.75	0
Canadian claimants	0.75	0.25	0
Commercial radio	0	0	0

The allocation adopted by the Tribunal under Phase II for the individual claimants in the Program Suppliers category is as follows:

Motion Picture Association of America, Inc. 98.500%
Multimedia Entertainment, Inc. 0.825%
National Association of Broadcasters ... 0.675%

Dated: April 18, 1989.

J. C. Argetsinger,

Acting Chairman.

[FR Doc. 89-9627 Filed 4-20-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Advisory Board; Cancellation of Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Advisory Board's HUMINT Panel, scheduled for 13 April 1989, previously announced in the **Federal Register** on Tuesday, April 4, 1989, Volume 54, No. 63, page 13555, FR Document 89-7975 was cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202 373-4980.

April 17, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-9623 Filed 4-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Panel on Government-Industry Relations; Panel Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Panel on Government-Industry Relations (DAPGIR) is scheduled to be held from 8 a.m. to 5:30 p.m. on May 4 1989. The meeting will be held at the U.S. Chamber of Commerce, 1615 H Street, NW., Washington, DC. This is the second meeting of the DAPGIR. The agenda will include baseline briefings to provide all panel members a common basis of understanding pertaining to current regulatory requirements of the areas under study. It is also expected that members of the Senate and House of Representatives will address the panel.

The DAPGIR was established pursuant to section 808, Pub. L. 100-456 to study and make recommendations to the Secretary of Defense on ways to enhance cooperation between the Department of Defense and industry regarding matters of mutual interest, including (1) procedures governing the debarment and suspension of contractors from doing business with the Department of Defense; (2) the role of self-governing oversight programs established by defense contractors; and (3) expanded use of alternative disputes resolution procedures. The Panel will also study and make recommendations on the desirability of establishing a permanent panel. Membership of the DAPGIR is comprised of senior government acquisition officials, prominent academicians and senior executives from private industry.

Persons desiring to attend the Panel meeting should contact Ms. Regina Bacon, Defense Advisory Panel on Government-Industry Relations, ATTN: DLA-L, Cameron Station, VA 22304, telephone (202) 274-7146, no later than May 1, 1989.

April 17, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-9624 Filed 4-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on SDIO Technology Assessment; Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on SDIO Technology Assessment scheduled for April 5-6, 1989 as published in the **Federal Register** (Vol. 54, No. 51, Page 11263, Friday, March 17, 1989, FR Doc. 89-6295) will be held on June 7-8, 1989.

April 17, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-9625 Filed 4-20-89; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Advisory Committee on Uncompensated Overtime; Meetings

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense Advisory Committee on Uncompensated Overtime, established pursuant to section 804 of the FY89 National Defense Authorization Act (Pub. L. 100-456), will meet on the dates indicated below to: (1) Develop criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) make recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the Advisory Committee shall address the following issues: (a) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations; (b) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and (c) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and

2,080 hours per year. The meetings are open to the public.

Dates and Time: May 12 and May 26, 1:00 pm to 4:00 pm

Location: The Pentagon, Washington, DC: OSD Conference Area 1E801, Room #1

FOR FURTHER INFORMATION CONTACT: Please contact the following Action Officer five days in advance of the meeting date if you plan to attend either meeting or require any additional information: Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301–1900, (202) 695–7249.

April 17, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–9626 Filed 4–20–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Notice of Availability of a Draft Environmental Impact Statement (EIS)

AGENCY: National Guard Bureau, DOD/ Michigan Department of Military Affairs, DoD.

ACTION: Notice of availability of a draft environmental impact statement: Proposed mission expansion/multiple construction at Camp Grayling Army National Guard Training Site, Michigan.

Background

Camp Grayling Army National Guard Training Area is a state owned, state operated, federally funded installation. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and the Michigan Department of Military Affairs have, acting as co-lead agencies, prepared a Draft Environmental Impact Statement on the proposed master plan mission expansion/multiple construction at Camp Grayling, Michigan. On July 22, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register.** A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR 1500–1508)) was conducted on September 6, 1986, at Grayling, Michigan, to identify significant issues related to the proposed master plan mission expansion/multiple construction at Camp Grayling.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges and associated maneuver areas, and a potential for increased training site utilization. The Draft Environmental Impact Statement addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Draft EIS:

(a) No Action (Status quo)
(b) Modification/Alteration of Proposed Action
(c) Conduct actions at another location

Document Availability

The identification of preferred alternatives in the Draft Environmental Impact Statement does not constitute a final decision. The Draft EIS and any comments received will be used by the Army National Guard to prepare a Record of Decision. Copies of the Draft EIS may be obtained from: Michigan Department of Military Affairs, ATTN: Gregory Huntington, Construction and Facilities Office, 2500 South Washington Ave, Lansing, Michigan 48913, or (517) 483–5645.

Hugh M. McAlear,

Assistant for Environment OASA (I&L).

[FR Doc. 89–9754 Filed 4–20–89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on May 11–12 1989, in Herrmann Hall at the School. On both days the first session will commence at 8:15 a.m. and terminate at 12:00 noon and the second session will commence at 1:15 p.m. and terminate at 5:00 p.m. All sessions are open to the public.

The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting, contact: Commander Gary K. Iversen, USN (Code 007), Naval Postgraduate School, Monterey, California 93943–5000, Telephone: (408) 646–2513.

Date: April 13, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–9586 Filed 4–20–89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research 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 Naval Research advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on May 9–10, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on May 9 and 10, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the survivability of Navy tactical communications in a hostile environment. The agenda will include briefings and discussions on related to C3I program appraisal and budget assessment, threat analysis, and program summaries. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Execution Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. 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 552(c) (1) of title 5, United States Code.

For further information concerning this meeting contract: Commander L. W.

Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: April 17, 1989.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89–9585 Filed 4–20–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89–20–NG]

Brymore Energy Inc.; Application To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 27, 1989, of an application filed by Brymore Energy Inc. (BEI) requesting blanket authorization to export up to 200 Bcf of natural gas from the United States to Canada for short-term and spot market sales over a two-year period beginning on the date of the first delivery. BEI intends to export this gas at the international boundary near Detroit, Michigan, by means of existing pipeline facilities. BEI also proposes to submit quarterly reports detailing each transaction.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 22, 1989.

FOR FURTHER INFORMATION:

William C. Daroff, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: BEI, a Delaware corporation with its principal place of business in Las Vegas, Nevada, proposes to export this natural gas under contract arrangements of two years or less, either for its own account, or as a broker or agent for other parties. The specific terms of each export and sale would be negotiated on an individual basis at prices responsive to the market. No contracts have been executed and therefore the application does not identify the suppliers, buyers, or prices.

In support of its application, BEI asserts that there is no present national need for the gas to be exported and the short term of the authorization ensures that the gas would be available for domestic consumption should the current oversupply situation reverse itself. In addition, the applicant states that the proposed export will advance the U.S. policy goals of reducing trade barriers and encouraging competition and efficient distribution of goods between the U.S. and Canada.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, the domestic need for the gas will be considered, and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested export authority. The applicant asserts that the export arrangements transacted under the requested authority will be competitive and in the public interest, and that there is no current need for domestic gas that it proposes to export. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., May 22, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there

are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of BEI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 12, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–9628 Filed 4–20–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–15–NG]

Great Lakes Gas Transmission Co.; Application To Amend Existing Authorization to Import and Export Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice Of application to amend existing authorization to import and export Canadian natural gas.

SUMMARY: The office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 24, 1989, of an application filed by Great Lakes Gas Transmission Company (Great Lakes) to amend an existing authorization to import and export Canadian natural gas granted in DOE/ERA Opinion and Order No. 264 (Order 264) issued on August 9, 1988. The Amendment would allow Great Lakes to provide additional 417,000 Mcf of firm daily transportation service for TransCanada PipeLines Limited (TransCanada). Great Lakes proposes to construct 459.6 miles of pipeline loop and related facilities to transport the increased volumes.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 22, 1989.

FOR FURTHER INFORMATION:

Stan Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–091, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1302.

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Great Lakes is jointly owned by TransCanada and The Coastal Corporation. Great Lakes currently transports Canadian natural gas for the account of TransCanada from the international boundary near Emerson, Manitoba, to the international boundary near St. Clair, Michigan, as part of a transportation arrangement to move gas from one point in Canada to another point in Canada by traversing a portion of the U.S. None of the imported gas is authorized to be sold or stored in the U.S. Great Lakes is authorized by Order 264 to import from and export to TransCanada through November 1, 2005, up to 925,000 Mcf per day of firm volumes. On October 31, 1988, Great Lakes was granted temporary, limited authority in DOE/ERA Opinion and Order No. 276 (Order 276), ERA Docket No. 88–56–NG, to increase, by 62,500 Mcf per day on an interruptible basis, the volumes of natural gas which it may import into the U.S. for redelivery back into Canada through existing Great Lakes pipeline facilities. This interruptible service would be converted to firm transportation service after Great Lakes receives from the Federal Energy Regulatory Commission (FERC) a certificate to construct 90.8 miles of 36-inch pipeline loop needed to transport the additional volumes on a firm basis, as well as final approval from the DOE to import and export the gas. Construction of the necessary facilities is scheduled to begin in the autumn of 1989.

By this application, Great Lakes seeks authorization to increase the firm volumes of Canadian natural gas imported and exported for transportation on behalf of TransCanada by an additional 417,500 mcf per day. This gas, together with all previously approved volumes (including the interruptible gas), would increase to 1,405,000 Mcf per day the total amount imported and exported for transportation on behalf of TransCanada. Great Lakes' proposal in this proceeding is dependent upon the construction of 459.6 miles of pipeline loop and 25 aerodynamic assemblies adjacent to its existing pipeline. This construction is in addition to the construction involved in Order 276. The date when transportation of the additional 417,500 Mcf per day would begin is the later of November 1, 1990, and the date ten days after Great Lakes advises TransCanada that the new facilities required to provide the increased service are constructed and operational.

In support of its application, Great Lakes states that transporting the additional volumes for TransCanada is in the public interest because it will provide residential, commercial, and industrial markets in Eastern Canada with competitively priced natural gas supplies. According to Great Lakes, some of the gas exported back into Canada would also be destined for consumption in the U.S. Northeast. However, parties involved in those import arrangements would be required, as asserted by Great Lakes, to apply separately for an import authorization.

Great Lakes filed a related application with the FERC in Docket No. CP89–892–000, to amend its existing certificate authority to transport the 417,500 Mcf per day of additional volumes which is the subject of this proceeding.

This import and export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. Since, according to the application, the same gas would be imported and exported solely as part of a transportation arrangement, and will not be sold or stored in the U.S., the DOE does not believe that it is necessary to consider in its evaluation competitiveness, need for the gas or security of supply with respect to the proposed import, nor domestic need for the gas with respect to the proposed export.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires the DOE to give appropriate consideration to the environmental effect of its proposed actions. The FERC is currently performing an environmental review of the impacts of constructing and operating the proposed new pipeline facilities required for both conversion to firm deliveries of the interruptible gas previously authorized by Order 276, and for transportation on a firm basis of the proposed import involved in this proceeding. The DOE will independently review the results of the FERC environmental evaluation of

this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its obligations under NEPA.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., May 22, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Great Lakes' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 13, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–9629 Filed 4–20–89; 8:45]

BILLING CODE 6450–01–M

[FE Docket No. 89–12–NG]

ICG Utilities (Ontario) Ltd.; Application to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for authorization to import natural gas from and to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 21, 1989, of an application filed by ICG Utilities (Ontario) Ltd. (ICG), for authorization to import from Canada up to 8,267,250 Mcf of natural gas per year and to subsequently export the same natural gas to Canada, on a firm basis, over a term of fifteen years beginning on November 1, 1990, and ending on October 31, 2005. The import/export proposal would be a means of supplying gas to fuel a new cogeneration facility to be built at Fort Frances, Ontario, Canada, and would not result in a net import of gas into the U.S.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 22, 1989.

FOR FURTHER INFORMATION:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

ICG, a Canadian corporation with its principal place of business in North York, Ontario, is a large natural gas distribution company serving customers in more than 100 communities in Northwestern and Eastern Ontario. ICG requests authorization to import Canadian gas into the U.S. and to export the same gas to Canada as part of a transportation arrangement to supply gas to a new cogeneration facility which ICG plans to build at Fort Frances, Ontario. The steam and electricity generated by the new cogeneration facility would be consumed in Canada. The applicant asserts that there would be no net import, and no sale of the natural gas inside the U.S.

ICG asserts that no new domestic transmission facilities will be needed to implement the proposed import and export. The gas, to be acquired from various Canadian producers, would simply be transported from one point in Canada to another point in Canada via a pipeline which for a short span traverses a portion of the State of Minnesota.

In support of its application, ICG contends that since the gas would not be produced or consumed in the U.S., the issues of price, need for the gas, and security of supply are not relevant for the proposed import, nor is domestic need for the gas a relevant consideration for the proposed export. ICG also asserts that no new facilities would be constructed within the U.S. for the proposed import/export, and therefore there would be no environmental impact as a result of approval of the application.

Since, according to the application, the same gas will be imported and exported solely as part of a transportation arrangement, and will not be sold or stored in the U.S., the DOE does not believe that it is necessary to consider in its evaluation competitiveness, need for the gas, or security of supply with respect to the proposed import, nor domestic need for the gas with respect to the proposed export.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., May 22, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ICG's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 12, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–9630 Filed 4–20–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–18–NG]

Texas International Gas & Oil Co.; Application To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 8, 1989, of an application filed by Texas International Gas & Oil Company (TI), requesting blanket authorization to export from the United States to Mexico up to 30,000 Mcf of natural gas per day and 11 Bcf per year, or a total of 22 Bcf for short-term and spot market sales over a two-year period beginning on the date of first delivery. TI intends to use existing facilities in Texas for transportation of the volumes to be exported and to file quarterly reports detailing such transaction.

The application is filed with the Department pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than May 22, 1989.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9394.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: TI, a Texas corporation with its principal place of business in El Paso, Texas, does business as Service-Gas. TI proposes to purchase and export natural gas produced in the U.S. Southwest to Mexico for sale to purchasers on an interruptible or short-term, firm basis. With the exception of Petroleos Mexicanos, the Mexican national energy company, the identities of prospective customers and the specifics of each sale are not known at this time. TI states that each export and sale would be negotiated on an individual basis at competitive prices.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any international border

point where existing transmission facilities are located. In addition, a total amount of authorized volumes may be designated for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this applicaiton will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., May 22, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 13, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–9631 Filed 4–20–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3559–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed April 10, 1989 Through April 14, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890083, Draft, UMT, NJ, Boonton Line/Montclair Branch Rail Lines Corridor Improvements, Funding, Hudson, Morris, Sussex, Essex and Passaic Counties, NJ, Due: June 30, 1989; Contact: Lelitia Thompson (212) 264–8162.

EIS No. 890084, Draft, AFS, MT, White Stallion Timber Sale Management, Implementation, Darby Range District, Bitterroot National Forest, Ravalli County, Mt, Due: June 5, 1989, Contact: George L. Tompkins (406) 821–3913.

EIS No. 890085, Final, EPA, TX, Corpus Christi Ocean Dredged Material Disposal Site Designation for Material Dredged from the Corpus Christi Entrance Channel, TX, Due: May 22, 1989, Contact: Norm Thomas (214) 255–2260.

EIS No. 890086, Draft, USA, MI, Camp Grayling Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Crawford, Otsego and Kalkaska Counties, MI, Due: June 5, 1989, Contact: Greg Huntington (517) 483–5646.

EIS No. 890087, Final, COE, OK, Coal Creek Local Flood Protection, Implementation, City of Henryetta, Okmulgee County, OK, Due: May 22, 1989, Contact: J. Paul Mace (918) 581–7857.

EIS No. 890088, Draft, NPS, GA, US 27/GA–1/LaFayette Road Relocation, US 27 near County Road-144 on the south and GA–2 at US 27 on the north, Approval and 404 Permit, Walker and Catoosa Counties, GA, Due: June 5, 1989, Contact: Steve Price (404) 331–5835.

EIS No. 890089, Final, FHW, OR, North Reseburg Interchange/I–5 Construction, I–5 to Oakland-Shady Highway, Funding, Douglas County, OR, Due: May 22, 1989, Contact: Dale Wilken (503) 399–5749.

EIS No. 890090, DSuppl, DOE, NM, Waste Isolation Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM, Due: May 22, 1989, Contact: W. John Arthur III (505) 889–3038.

Amended Notices

EIS No. 890074, Final, FAA, MD, 15L/33R Runway Extension, Baltimore/Washington International Airport, Approval and Funding, Anne Arundel County, MD, Due: May 22, 1989, Contact: Michael C. West (301) 859–7068.

Published FR 4–7–89—Review period Reestablished. The 30 day NEPA wait period is calculated from 4–21–89.

Dated: April 18, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–9641 Filed 4–20–89; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3559-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 3, 1989 through April 7, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated. April 14, 1989.

Final EISs

ERP No.: F-AFS-K65072-CA, Pacific Southwest Region Vegetation Management, National Forests Reforestation Plan, Implementation, CA, OR and NV.

Summary: EPA's concerns and recommendations were incorporated in the final EIS, but did not demonstrate that all of the environmental concerns associated with the use of herbicides have been fully considered. EPA asked that subsequent Forest Service environmental documents at the project level described specific guidelines for herbicide use based on environmental considerations, in order to provide the basis for sound planning and public notification of herbicides use.

ERP No.: F-AFS-K65110-CA, Eldorado National Forest, Land and Resource Management Plan, Amador, Alpine, Eldorado and Placer Counties, CA.

Summary: EPA supported the water quality and riparian habitat protection measures proposed in this document. Close coordination with the regional water quality agency on future forest activities was recommended to ensure compliance with water quality protection requirements.

ERP No.: F-AFS-L65113-00, Pacific Northwest Region, National Forest System Lands, Competing and Unwanted Vegetation Mangement Plan, Implementation, Oregon, Idaho, Washington, and California.

Summary: EPA's major concern with the draft EIS was that the air quality effects of prescribed burning at sensitive areas (e.g. residences, campgrounds, highways) located immediately downwind of fires were underestimated. A commitment to using the available techniques for evaluating and mitigating such impacts on individual burns would alleviate this concern.

Dated: April 18, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-9642 Filed 4-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL—3559-2]

Proposed Administrative Penalty Assessment and Opportunity to Comment for the Colorado River Commission and J.F. Shea Co., Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. section 1319(g), EPA is authorized to issue orders assessing cvil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced athe following Class II proceeding for the assessment of penalties:

In the Matter of the Colorado River Commission, Las Vegas, Nevada and the J.F. Shea Co., Inc., Walnut, California; EPA Docket No. IX-FY89-34; filed on April 5, 1989, with James Casuscelli, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-0718; proposed penalty of $70,000 for discharging to Waters of the United States without an NPDES Permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of publication of this notice.

Dated: April 4, 1989.

Harry Seraydarian,

Director, Water Mangement Division.

[FR Doc. 89-9621 Filed 4-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3559-3]

Proposed Administrative Penalty Assessment and Opportunity to Comment for Texaco U.S.A., Inc., Ventura District, Los Angeles Operations Division

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assesssment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for

submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Texaco U.S.A., Inc., Ventura District, Los Angeles Operations Division, Ventura, California; EPA Docket No. IX–FY89–36; filed on April 12, 1989, with James Casuscelli, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974–0718; proposed penalty of $125,000 for discharges to Waters of the United States from the Platform Habitat facility in violation of the requirements established in their NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of publication of this notice.

Dated: April 12, 1989.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 89–9622 Filed 4–20–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89–449]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

April 18, 1989.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: May 9, 1989, 1:00 P.M., Commission Meeting Room (Room 856), 1919 M Street NW, Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734–2237 or David R. Siddall at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–9722 Filed 4–20–89; 8:45 am]

BILLING CODE 6712–01–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.: 224–200239.

Title: Port of Galveston Terminal Agreement.

Parties:

Board of Trustees of Galveston Wharves (Galveston)

Universal Shipping Agency, (USA)

Synopsis: The Agreement provides for Galveston to grant USA reduced "lay berth rates" for grain shipments through the Port of Galveston and a grace period during which USA's payments will not be subject to interest charges. The lay berth charge for using the berth will be $0.10 per GRT ton for the first day and $0.05 per GRT ton for each subsequent day. In addition, USA will be allowed 60 days for payment of invoice charges before interest charges are assessed on outstanding balances.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 17, 1989.

[FR Doc. 89–9553 Filed 4–20–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Marvin Braun;* Charles Kantor; Lonnie Barbara Kantor; and Thomas Gary; all of Miami, Florida; to acquire an additional 37.7 percent of the voting shares of Mega Bank, Miami, Florida, for a total of 40.5 percent.

2. *Raymond E. Mason, Jr.,* Venice, Florida; to retain 19 percent of the voting shares of Florida Westcoast Banks, Inc., Venice, Florida, and thereby indirectly acquire First National Bank of Venice, Venice, Florida.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Clifford R. Jerobak,* Bloomington, Minnesota, and Lloyd R. Jerobak, Excelsior, Minnesota; to acquire 97.72

percent of Crow River State Bank, Delano, Minnesota.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Robert E. Atkins,* Woodward, Oklahoma, to acquire an additional 38.85 percent for a total of 59.23 percent; Bryce L. Hodgden, Woodward, Oklahoma, to acquire an additional 38.85 percent for a total of 58.77 percent; and Jack Miller, Mooreland, Oklahoma, to acquire an additional 38.85 percent for a total of 59.34 percent of the voting shares of American Interstate Bancshares, Inc., Woodward, Oklahoma, and thereby indirectly acquire American National Bank, Woodward, Oklahoma.

2. *Jerry G. Jackson, Trust,* (Jerry G. Jackson, Grantor and Trustee), Stigler, Oklahoma; to acquire 100 percent of the voting shares of Stigler Bancorporation, Inc., Stigler, Oklahoma, and thereby indirectly acquire The First National Bank, Stigler, Oklahoma.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Donald H. Anderson,* Sherman, Texas; to acquire 51.46 percent of the voting shares of TransTexas Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire The First National Bank of Canton, Canton, Texas, and First State Bank, Pflugerville, Texas.

2. *R. Ransom Gallaway,* Lubbock, Texas; to acquire 32.67 percent of the voting shares of Kenco Bancshares, Inc., Jayton, Texas, and thereby indirectly acquire Kent County State Bank.

Board of Governors of the Federal Reserve System, April 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9574 Filed 4-20-89; 8:45 am]

BILLING CODE 6210-01-M

The Central Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts or interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The Central Bancorporation, Inc.,* Cincinnati, Ohio, and its parent, PNC Financial Corp., Pittsburgh, Pennsylvania, to acquire 14.04 percent of the voting shares or Money Station, Inc., Columbus, Ohio, and thereby engage in providing data processing, data transmission services, data base maintenance and telecommunication services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

FR Doc. 89-9575 Filed 4-20-89; 8:45 am]

BILLING CODE 6210-01-M

FNB, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested pesons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 10, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted. Jr., Vice President) 1455 East Sixth Street, Clevaland, Ohio 44101:

1. *FNB, Inc.*, Dennison, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Dennison, Dennison, Ohio.

2. *First Financial Bancorp*, Monroe, Ohio; to acquire 100 percent of the voting shares of Union Trust Company, Union City, Indiana.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Centurion Bancshares, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Guyan National Bank, Barboursville, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Banker's Bancorporation of Florida, Inc.*, Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Bankers' Bank of Florida, Orlando, Florida.

2. *Barnett Banks, Inc.*, Jacksonville, Florida; to acquire 100 percent of the voting shares of Investors Trust Financial Corporation, Duluth, Georgia, and thereby indirectly acquire Investors Bank & Trust, Duluth, Georgia.

3. *First National Bancorp*, Gainesville, Georgia; to merge with Pickens County Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire Pickens County Bank, Jasper, Georgia.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *FSB Bancorp, Inc.*, Breckenridge, Michigan; to become a bank holding company by acquring 100 percent of the voting shares of Farmers State Bank of Breckenridge, Breckenridge, Michigan.

2. *First National Bank of Blue Island Employee Stock Ownership Trust*, Blue Island, Illinois; to become a bank holding company by acquiring 39 percent of the voting shares of Greater Lakes financial Resources, Inc., Blue Island, Illinois, and thereby indirectly acquire First National Bank of Blue Island, Blue Island, Illinois, and Community Bank of Homewood-Flossmoor, Homewood, Illinois.

3. *Firstar Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of First National Bank of Wisconsin Rapids, Wisconsin Rapids, Wisconsin.

4. *Pine Creek Bancorp, Inc.*, Oakland, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Oakland National Bank, Oakland, Illinois.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado*, Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank at 9th/Corona, N.A., Denver, Colorado; FirstBank of Edgewater, N.A., Edgewater, Colorado; and FirstBank of Leetsdale/Monaco, N.A., Denver, Colorado.

2. *NorCentral Bancshares, Inc.*, Portis, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Portis, Kansas, which engages in the sale of credit life and crop insurance in a town with a population of less than 5000.

Board of Governors of the Federal Reserve System, April 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4576 Filed 4-20-89; 8:45]

BILLING CODE 6210-01-M

First Peoples Financial Corp., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Peoples Financial Corporation*, Westmont, Haddon Township, New Jersey; to engage *de novo* through its subsidiary First Peoples Mortage Corporation, Westmont, Haddon Township, New Jersey, in mortgatge banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to expand the activities of its wholly-owned subsidiary, Barnett Merchants Services, Inc., Jacksonville, Florida, to include serving as agent for the receipt of information concerning lost or stolen credit cards from Barnett's cardholders pursuant to 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9577 Filed 4-20-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 7, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. The Community Intervention Trial for Smoking Cessation (COMMIT)—Intervention Activities Surveys—0925-0309—The National Cancer Institute is conducting the Community Intervention Trial for Smoking Cessation (COMMIT), which will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers. This request is for the pretesting and fielding of intervention activities surveys of health care professionals, worksites, local organizations, cessation resources and the smokers' hotline network to assess and monitor the progress of the smoking cessation interventions in these specific channels. Respondents: Individuals or households; State or local governments; businesses or other for-profit; non-profit institutions, small businesses or organizations.

	No. of Respondents	No. of Hours Per Response	No. of Responses Per Respondent
Health Practitioners	1,855	.069 hrs.	1
Worksites Survey	815	.592 hrs.	1
Religious Organizations	383	.308 hrs.	1

	No. of Respondents	No. of Hours Per Response	No. of Responses Per Respondent
Cessation Resources Survey	300	.596 hrs.	1.95
Lay Public Hotline Callers	20,361	.009 hrs.	1

Estimated Annual Burden..... 1,261 hours

2. 1988 National Maternal and Infant Health Survey—0920–0228—This survey provides data on maternal and infant health care, complications, and birth outcome, including live births, low birthweight, and fetal and infant deaths. It is needed by Federal and State researchers to study these birth outcomes and assess program needs in maternal and infant health. The purpose of this revision is to obtain information for the Indian Health Service about maternal and child health among urban Indians. Respondents: Individuals or households; businesses or other for-profit; Number of Respondents: 20,454; Number of Responses per Respondent: 1; Average Burden per Response: .5 hours; Estimated Annual Burden: 10,227 hours.

3. HRSA Competing Training Grant Application—0915–0060—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. The purpose of this revision is to add two new programs as users of the application: Podiatric Residency Training Program, and Scholarships for Undergraduate Education of Professional Nurses. Respondents: State and local governments; non-profit institutions.

	No. of Respondents	No. of Hours Per Response	No. of Responses Per Respondent
Podiatry Programs	25	56.25 hrs	1
Nursing Programs	250	56.25 hrs	1

Estimated Annual Burden..... 15,471 hours

4. NIH: Medical Staff Fellowship Program—0925–0006—Information from these forms is used to determine qualifications and preferences for a clinical, research or a staff fellowship position at the National Institutes of Health, the National Institute of Mental Health, and the National Institute on Alcohol Abuse and Alcoholism. Respondents: Individuals or households.

	No. of Respondents	No. of Hours Per Response	No. of Responses Per Respondent
Applicants	135	1.75 hrs	1
Referees	405	.08 hrs.	1

Estimated Annual Burden..... 254 hours

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: April 17, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–9583 Filed 4–20–89; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on April 7, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Child Care and Dropout Questionnaire—New—The information collected on the SSA–4162 is used by the Social Security Administration to determine if an applicant for disability benefits may have certain computation years excluded from the benefit computation. The respondents are individuals applying for disability benefits.

Number of Respondents: 2,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 166 hours

2. Statement Regarding Student's School Attendance—0960–0113—The information collected on the form SSA–2434 is used by the Social Security Administration to determine the student status of certain children, brothers and sisters of deceased or disabled coal miners. The respondents are such persons who want to continue receiving benefits beyond age 18 because they are or will be full-time students.

Number of Respondents: 5,340
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 445 hours

3. Missing and Discrepant Wage Reports Letters and Questionnaires—0960–0432—The information collected on forms SSA–L2620, L2623, 2621 and 2622 will be used by the Social Security Administration to reconcile its wage reports (from employers) with wage reports from those same employers to the Internal Revenue Service. The

respondents are employers which have missing or discrepant wage reports.

Number of Respondents: 354,900
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 177,450 hours

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: April 17, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-9595 Filed 4-20-89; 8:45 am]

BILLING CODE 4190-11-M

Disability Advisory Committee; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces the schedule and proposed agenda of a forthcoming meeting of the Disability Advisory Committee (the Committee).

DATES: May 24, 1989, 8:00 a.m. to 6:00 p.m.; May 25, 1989, 8:00 a.m. to 6:00 p.m.

ADDRESS: Guest Quarters Suite Hotel at Baltimore-Washington International Airport, The Garrett Room, 1300 Concourse Drive, Linthicum, MD 21090.

AGENDA: Review materials and formulate recommendations.

The Committee may hold additional sessions during the evenings of May 24 and/or May 25, 1989. If the Committee decides to hold these evening sessions, the Committee will make an announcement during the regularly scheduled sessions.

FOR FURTHER INFORMATION CONTACT: Jean H. Hinckley, Executive Director, Disability Advisory Committee, P.O. Box 17064, Baltimore, Maryland 21235, (301) 965-4646.

SUPPLEMENTARY INFORMATION: The Committee is established under and governed by the provisions of section 1114 of the Social Security Act, as amended, and the provisions of the Federal Advisory Committee Act, as amended, (Pub. L. 92-463). The Committee is chaired by Dr. John E. Affeldt.

The purposes of the Committee are to study the Social Security administrative review process (known as the "appeals process") to ensure that the process protects the rights of the claimants, produces accurate and swift decisions, and is viewed as fair and equitable; receive and consider public views on reform of the process; and make a report and recommendations to the Commissioner of Social Security.

The Committee is scheduling this meeting to review and discuss the oral and written comments received pursuant to two public meetings held in March 1989 (announced February 21, 1989 at 54 FR 7477). During the review and discussion, the Committee will identify the issues and proposals and formulate recommendations for inclusion in its report to the Commissioner of Social Security.

This meeting is open to the public to the extent space is available. Anyone wishing to submit a written statement of his or her views and/or questions for consideration by the Committee should send them to the Executive Director of the Committee at the post office box shown above.

A transcript of the Committee meeting is available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Committee. The transcript and all written submissions will become part of the record of these proceedings.

Dated: April 14, 1989.

Jean H. Hinckley,

Executive Director, Disability Advisory Committee.

[FR Doc. 89-9584 Filed 4-20-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-040-09-4120-08, OK NM 0141015 and OK BLM 017612]

Amendment of Southeast Oklahoma Management Framework Plan; LeFlore County, Oklahoma

AGENCY: Bureau of Land Management, Interior, Tulsa District, Oklahoma.

ACTION: Notice of amendment of Management Framework Plan for Coal Lease Modifications in LeFlore County, Oklahoma.

SUMMARY: The Bureau of Land Management (BLM), Oklahoma Resource Area, Oklahoma has amended the Southeast Oklahoma Management Framework Plan (MFP) to allow the modification of two Federal coal leases in LeFlore County, Oklahoma. The amendment modified a decision which precluded the Bureau from considering leasing actions outside of areas designated in the 1980 plan.

DATE: The amendment is subject to a 30-day protest period. Protests must be postmarked no later than May 30, 1989.

ADDRESS: Any protest to the amendment must be submitted in writing to: Director (760), Bureau of Land Management, Premier Bldg., Room 909, 18th and C Streets NW., Washington, DC 20240. A party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Area Manager, or Jim Gegen, Team Leader, Oklahoma Resource Area, (405) 231-5491.

SUPPLEMENTARY INFORMATION: Any person who is on record for participating in the planning process and had an interest that is or may be affected by approval of the Amendment may file a protest.

Protests should be presented to the BLM Director with the following information: (1) Name, mailing address, telephone number, and interest of the person filing the protest; (2) statement of the issue(s) being protested; (3) a statement of the part(s) being protested; (4) a copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting party or an indication of the date the issue(s) were discussed for the records; and (5) a concise statement explaining why the proposed BLM New Mexico State Director's decision is wrong.

At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, will become final. Approval of the proposed land use plan amendment will constitute formal designation of two tracts as acceptable for further consideration for leasing.

Evans Coal Company proposes to modify Federal Lease OK BLM 017612, by adding 120 acres contiguous to the lease, located four miles west of Spiro, Oklahoma. Laredo Solid Fuels, Inc. proposes to modify Federal Lease OK NM 0141015, by adding 50 acres contiguous to the lease, located two miles southwest of Heavener, Oklahoma. Complete records of the planning amendment process are available for public review at the Oklahoma Resource Area, 200 NW., Fifth Street, Room 548, Oklahoma City, OK 73102.

Dated: April 17, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89-9570 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-920-09-4212-13; AZA-23085-B]

Arizona; Exchange of Public and Private Lands in Maricopa and Yavapai Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Olympic Lake Pleasant General Partnership II, an Arizona general partnership. The United States transfered 1,759.59 acres in Maricopa County and Olympic Lake Pleasant General Partnership II conveyed 2,694.804 acres in Yavapai County.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the Bureau of Land Management transferred the following described land by Patent No. 02-89-0020 pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian

T. 6 N., R. 2 W.,
Sec. 4, lot 4, SW¼NE¼, SW¼SE¼NE¼, W½SE¼SE¼NE¼, S½NW¼, S½;
Sec. 5, lots 1 to 4, incl., S½N½;
Sec. 6, lots 1 to 5, incl., N½SE¼NE¼, SW¼SE¼NE¼, SW¼NE¼, SE¼NW¼;
Sec. 9, all.

The areas described comprise 1,759.59 acres in Maricopa County.

In exchange the following described land was conveyed to the United States:

Gila and Salt River Meridian

T. 9 N., R. 2 W.,
Sec. 1, patented "Campview" lode mining claim designated by MS 1557 A & B, patented "Chicago" lode mining claim designated by MS 1665, patented "Cleveland and Boston" lode mining claims designated by MS 1676;
Sec. 3, lots 1 to 4 incl., SW¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, N½SE¼SE¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 4, lots 1 and 2, S½NE¼, SE¼;
Sec. 5, lot 4, SW¼NW¼, W½SW¼;
Sec. 6, lots 6 and 7, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½;
Sec. 10, NE¼;
Sec. 17, W½W½;
Sec. 18, lots 1 to 4, incl., E½, E½W½.

The areas described comprise 2,674.804 acres in Yavapai County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

Marsha L. Luke,

Acting Chief, Branch of Lands Operations.

[FR Doc. 89-9612 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-32-M

[MT-930-09-4212-13; MTM 77153]

Conveyance and Order Providing for Opening of Public Land in Carter County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. No minerals were transferred in the exchange. It also informs the public and interested state and local government officials of the issuance of the conveyance document.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2941.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to Section 206 of FLPMA, the following described surface estate was transferred to Tom D. Stieg and Kathy J. Stieg:

Principal Meridian, Montana

T. 4 S., R. 58 E.,
Sec. 5, SW¼NW¼;
Sec. 6, lot 3, SE¼NW¼, E½NE¼SW¼;
Sec. 21, E½NE¼, E½SW¼, SE¼;
Sec. 29, N½NE¼

Containing 559.83 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate from the Stiegs:

Principal Meridian, Montana

T. 3 S., R. 58 E.,
Sec. 31, W½SE¼.
T. 4 S., R. 58 E.,
Sec. 27, S½NW¼;
Sec. 28, S½N½;
Sec. 29, S½N¼, SE¼.

Aggregating 560 acres.

3. The values of the Federal public land and the private land were appraised at $16,800 each.

Opening Date

4. At 9 a.m. on June 14, 1989, the lands described in paragraph 2 above that were conveyed to the United States will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications under the public land laws received at or prior to 9 a.m. on June 14, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

April 12, 1989.

[FR Doc. 89-9566 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-DN-M

[NM-030-09-4212; NM NM 77575]

An Exchange of Public Land with the Nature Conservancy in Dona Ana County, NM; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of case file serial number.

SUMMARY: This notice corrects the serial number previously published in the March 9, 1989 (Vol 54 No 45 FR 10054) Federal Register in the first line of the Notice of Realty Action. The correct case file serial number is NM NM 77575.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005 or at (505) 525-8228 (FTS 571-8312).

H. James Fox,

District Manager.

April 14, 1989.

[FR Doc. 89-9546 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-FB-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

April 14, 1989.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., April 14, 1989.

The plat representing the dependent resurvey of portions of the south and west boundaries and subdivisional lines, and the subdivision of sections 20, 29, and 31, T. 4 S., R. 82 W., Sixth

Principal Meridian, Colorado, Group No. 809, was accepted March 30, 1989.

This survey was requested by the U.S. Forest Service, Rocky Mountain Region, to identify the National Forest boundary.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-9611 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-JB-M

[CO-930-09-4214-11; C-22622]

Proposed Modification and Continuation of Withdrawal; Colorado

April 12, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Department of the Interior, proposes that the order which withdrew 27.80 acres of public land for an indefinite period of time for the Escalante Historical site be modified and the withdrawal be continued for 20 years. The land will continue to be closed to surface entry, to the mining laws, and to the mineral leasing laws.

DATE: Comments should be received on or before July 20, 1989.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office 303-236-1768.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, Department of the Interior, proposes that the existing withdrawal made by Public Land Order No. 5589 for an indefinite period of time be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 37 N., R. 15 W.,

Sec. 7, A tract of land in the NW¼SE¼, commencing at the northwest corner of NW¼SE¼ of said section 7, the point of beginning: thence N. 89°31'00" E., 653.400 ft; thence S. 26°37'30" E., 752.070 ft.; thence S. 0°52'45" E., 675.180 ft.; thence S. 89°34'00" W., 977.130 ft.; thence N. 1°01'00" W., 1350.360 ft., to the point of beginning.

The area contains 27.80 acres in Montezuma County.

The purpose of this withdrawal is for the administration and protection of the Escaltante Historic Site and Anazazi Heritage Center. No change is proposed in the purpose of this withdrawal. The land will continue to be withdrawn from surface entry, mining, and mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Jenny Saunders,

Acting Chief, Realty Programs.

[FR Doc. 89-9567 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-JB-M

[WY-930-09-4214-10; WYW 115104]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

This notice will correct the Notice of Proposed Withdrawal and Opportunity for Public Meeting published in Vol. 54, No. 50, Thursday, March 16, 1989, page 11085. The Notice is corrected by changing the following legal description:

Sixth Principal Meridian

1. Change lots 1-3, NW¼NE¼, NE¼NW¼, of sec. 19, T. 16 N., R. 79 W., to lots 1-2, N½ N½ and S½S½ of lot 3, NW¼NE¼, NE¼ NW¼.

2. Change T. 19 N., R. 79 W., to T. 17 N., R. 79 W.

The acreage amount is corrected by changing the totals from 21,575.64 to 21,636.29 acres.

F. William Eikenberry,

Associate State Director.

Date: April 12, 1989.

[FR Doc. 89-9613 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4397 and 6581, Blocks 291 and 292, respectively, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on April 10, 1989. Comments must be received on or before May 8, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management

Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 13, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-9568 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Golf Course Specialists, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Golf Course Specialists, Inc., authorizing it to continue to provide golf course facilities and services for the public at Rock Creek Park, Washington, DC, for approximately five (5) years from April 1, 1989.

EFFECTIVE DATE: June 20, 1989.

ADDRESS: Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on March 31, 1989, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Robert Stanton,

Regional Director, National Capital Region.

Date: March 28, 1989.

[FR Doc. 89-9582 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Central Valley Project Water Conveyance Improvement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearing for the draft environmental impact report/environmental impact statement (DEIR/DEIS) INTDES-89-07.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and Section 21002 of the California Environmental Quality Act, the Bureau of Reclamation and the Westlands Water District (WWD) prepared a joint DEIR-DEIS. The DEIR/DEIS addresses the impacts of alternative conveyance or other means to continue to provide up to 125,000 acre-feet of interim water annually to the WWD which historically has been provided by the Delta Mendota Canal (DMC) within the capacity reserved for San Felipe Unit (SFU). SFU will henceforth be taking its contracted water supply leaving no capacity in the DMC to deliver interim water to WWD.

DATES: A 60-day public review of the DEIS commences with the publication of this notice. Comments should be submitted to the Regional Director at the address below on or before June 20, 1989.

A public hearing on the DEIR/DEIS has been scheduled to solicit public comment on the project. The hearing will be held in Sacramento, California, on May 22, 1989. The hearing will begin at 7:30 p.m. and will be scheduled to end at 9:30 p.m.

ADDRESSES: The hearing will be held at: Red Lion, 2001 Point West Way, Sacramento, California.

Single copies of the DEIS may be obtained on request to the Regional Director at the following address:

Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP-410), 2800 Collage Way, Sacramento, CA 95825; Telephone (916) 978-5049.

Copies of the DEIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Environmental and Planning Branch, U.S. Department of Interior, 18th and C Streets, NW., Room 7455, Washington, DC 20240; Telephone (202) 343-4662.

Libraries:

Bureau of Reclamation Library, 2800 Cottage Way, Sacramento, CA 95825.

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225; Telephone (303) 236-6963.

Contra Costa County Central Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523.

Fresno County Free Library, 2320 Mariposa Street, Fresno, CA 93721.

Sacramento Public Library, 828 I Street, Sacramento, CA 95814.

San Francisco Public Library, Government Documents Department, Civic Center, San Francisco, CA 94102.

FOR FURTHER INFORMATION CONTACT: Mr. John Brooks (Environmental Specialist, Mid-Pacific Region, MP-410, 2800 Cottage Way, Sacramento, California 95825), Telephone (916) 978-5049; or Mr. Lance Johnson (Project Engineer, Westlands Water District, 3130 Fresno Street, Fresno, California 93703), Telephone (209) 224-1642.

SUPPLEMENTARY INFORMATION: Due to conveyance capacity limitations, farmers within the WWD face a shortfall in the quantity of water historically available. The purpose of this improvement to the Central Valley Project (CVP) is to identify and describe altenatives for making up for the projected shortfall in order to maintain historic levels of irrigation.

Environmental effects addressed in the DEIR/DEIS include economic impacts caused by the irrigation water shortfalls, impacts on fish and wildlife, consequences of ground-water pumping, agricultural drainage, and water quality impacts.

The public hearing on the DEIR/DEIS is designed to receive views and comments from interested organizations and individuals relating to the environmental impacts on the Westlands Water District Water Supply Replacement Project. Organizations or individuals who would like to present statements at the hearing should contact the Mr. John Brooks, at the address or telephone number given above, and announce their intentions to participate. Speakers will be scheduled according to their time preference, if possible. Requests for scheduled presentations will be accepted until 4 p.m. on May 17, 1989. Any subsequent requests will be accommodated on a first-come, first-

served basis following the scheduled presentations at the hearing.

Speakers not present when called will lose their privileges in the schedule order, and their names will be recalled at the end of the scheduled speakers. Oral statements at the hearing will be limited to a period of 10 minutes per speaker. Speakers cannot combine times to obtain a longer oral presentation and will not be allowed to trade their scheduled time with someone else. However, the person authorized to conduct the hearing may allow speakers to provide additional oral comments after all persons wishing to comment have been heard.

Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearing should be received by June 19, 1989, to be included in the hearing record.

Date: April 19, 1989.

C. Dale Duvall,

Commissioner.

[FR Doc. 89-9780 Filed 4-20-89; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations; Richfood, Inc. et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Richfood, Inc., (Parent Company) 2000 Richfood Road, Mechanicsville, Virginia 23111.

2. Garner Wholesale Merchandisers, Inc., 305 Industrial Boulevard, Greenville, North Carolina 27835, (A Virginia Corporation).

Noreta R. McGee,

Secretary.

[FR Doc. 89-9551 Filed 4-20-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-213 (Sub-No. 3X)]

Canadian Pacific, Ltd.; Abandonment Exemption; in Aroostook County, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Canadian Pacific, Ltd. of 26.79 miles of rail line in Aroostook County, ME, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 22, 1989. Petitions to stay must be filed by May 8, 1989. Petitions for reconsideration must be filed by May 16, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 1, 1989. Requests for a public use condition must be filed by May 1, 1989.

ADDRESSES: Send pleadings, referring to Docket No. AB-213 (Sub-No. 3X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: Charles H. White, Jr., 1730 Pennsylvania Ave., NW., Suite 400, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: April 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-9549 Filed 4-20-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31440]

Intermountain Western Railroad Co.; Lease and Operation Exemption; Line of Oregon Northwestern Railroad Co. and Snowmountain Pine Co.

Intermountain Western Railroad Company (IWRR) has filed a notice of exemption to lease and to operate 4 miles of rail line owned by Oregon Northwestern Railroad Company (ONRC), a wholly owned subsidiary of Snowmountain Pine Company. The line extends between the Snowmountain Pine facility and Burns (milepost 156.5) in Harney County, OR. The transaction will be consummated contingent upon and shortly after the granting of the petition for exemption from the prior approval requirements of 49 U.S.C. 11343 for the common control of two railroads that was filed concurrently with this notice.[1]

Any comments must be filed with the Commission and served on: Paul S. Street, Moffatt, Thomas, Barrett, Rock & Fields, Chartered, P.O. Box 829, Boise ID 83701; Karl Morell, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Suite 700, East Lobby, Washington, DC 20007; and Doug Durbano, Durbano, Smith & Reeve, United Savings Plaza #320, 4185 Harrison Blvd., Ogden UT 84403.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 49 U.S.C. 470, is achieved. *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C. 2d 309 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition of revoke will not automatically stay the transaction.

Decided: April 17, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-9550 Filed 4-20-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Royal N. Hardage, et al.

In accordance with section 122(d)(2)(B), 42 U.S.C. 9622(d)(2)(B) of

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[1] IWRR, a non-carrier, is owned and controlled by two general partners: (1) ITS, Inc., a non-carrier and wholly owned subsidiary of Intermountain Gas Industries, Inc., also a non-carrier; and (2) Big Sky Industries, Inc., owned by Phillip Scott and David Durbano. Because Messrs. Scott and Durbano also control the Wyoming Colorado Railroad, Inc. (WYCO), they have filed, concurrently with the filing of this notice of exemption, a petition pursuant to 49 U.S.C. 10505 for exemption from the prior approval requirements for their common control of WYCO and IWRR in Finance Docket No. 31440 (Sub-No. 1).

the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree for *De Minimis* Settlement in *United States* v. *Royal N. Hardage, et al.*, Civil Action No. CV–86–1401–P, was lodged with the United States District Court for the Western District of Oklahoma on April 7, 1989. The proposed Consent Decree for *De Minimis* Settlement is entered into in accordance with section 112(g), 42 U.S.C. 9622(g) of the Comprehensive Environmental Response, Compensation, and Liability Act. The proposed decree resolves the liability of settling parties whose contributions to the Hardage waste disposal site located in Criner, Oklahoma, have been determined by the Environmental Protection Agency to have been *de minimis*, both in terms of volume and toxicity. Under the terms of the proposed decree, settling parties will make payments to the Hazardous Substance Superfund in reimbursement for the United States' past and future response costs. Additionally, the proposed decree for cleanup of the principal disposal areas of the Site contamination resulting from migration from the principal disposal areas, as well as investigation of migration of hazardous substances from the disposal areas.

The Department of Justice will receive for a period of 30 days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Royal N. Hardage, et al.* D.J. Ref. 90–5–2–1–30–A.

The proposed Consent Decree for *De Minimis* Settlement may be examined at the office of the United States Attorney, Western District of Oklahoma, 4434 U.S. Courthouse, Oklahoma City, Oklahoma 73102; at the Region VI office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Environmental Enforcement Section, Land and Natural Resources Division, United Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree for *De Minimis* Settlement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $2.10, payable to the Treasurer of the United States, to cover the costs of reproduction.

Donald A Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–9614 Filed 4–20–89; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Iron Springs Sanitary District, et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Iron Springs Sanitary District, et al.*, Civil Action No. 87–1345–PHX–RCB, was lodged with the United States District Court for the District of Arizona on March 31, 1989. The consent decree establishes a compliance schedule to bring Iron Springs Sanitary District's two publicly owned wastewater treatment facilities, known as the Wildwood Treatment Plant and the Pine Lakes Treatment Plant, into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the applicable National Pollutant Discharge Elimination System Permits, and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of $20,000. The consent decree calls for the Iron Springs Sanitary District to achieve compliance with the permit effluent limitations and operation and maintenance requirements within 30 days of the date the Consent Decree is entered by the Court.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530 and should refer to *United States* v. *Iron Springs Sanitary District, et al.*, D.J. Ref. No. 90–5–1–1–2873.

The consent decree may be examined at the office of the United States Attorney, District of Arizona, 4000 U.S. Courthouse, 230 North First Avenue, Phoenix, Arizona 85025 and at the Region IX office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $5.10 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–9615 Filed 4–20–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act; City of Pahokee, FL

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on April 10, 1989, a proposed Consent Decree in *United States* v. *City of Pahokee, Florida*, Civil Action No. 88–8204–CIV–GONZALES, was lodged with the United States District Court for the Southern District of Florida. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Pahokee, Florida. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act.

Under the proposed Consent Decree, the City will pay a civil penalty of $45,000. The Decree requires the City to undertake numerous remedial measures to ensure that it complies with the Act in its operation of its sewage treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of Pahokee, Florida*, D.J. Ref. 90–5–1–1–3057.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Florida, 155 South Miami Avenue, Miami, Florida 33150; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NW., Altanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of

the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totaling $1.80 ($0.10 per page) payable to "United States Treasurer."

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–9616 Filed 4–20–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging a Final Judgment by Consent Pursuant to the Clean Water Act; USX Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 10, 1989 a proposed Consent Decree in *United States of America and the Commonwealth of Pennsylvania* v. *USX Corporation,* Civil Action No. 88–7346, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The complaint filed by the United States alleged that USX violated section 301(a) of the Clean Water Act (the "Act"), 33 U.S.C. 1311(a), by discharging pollutants from its Clairton, Edgar Thomson, and Fairless Works in excess of the limitations allowed by USX's NPDES permits issued by EPA and the Commonwealth of Pennsylvania. The United States sought an injunction and civil penalties of up to $25,000 per day of violation against USX.

USX, the Commonwealth of Pennsylvania, and the United States have executed the Consent Decree. USX has agreed to pay a civil penalty of $750,000.00 to resolve past violations of the Act, $487,500.00 to the United States and $262,500.00 to the Commonwealth of Pennsylvania. USX is also liable for the payment of stipulated penalties for violations of its NPDES permits occurring between January 1, 1989 and termination of the Consent Decree. USX shall construct a wastewater treatment facility at Fairless to pre-treat the effluent discharged from Fairless' tin-free chrome-plating line prior to treatment by the oil interception plant. USX shall hire a third-party consultant to conduct a diagnostic review of the Clairton biological treatment facility to recommend operation, maintenance, monitoring, and diagnostic procedures that USX shall employ at the biological treatment facility. All three facilities will undergo operation and maintenance review under EPA guidance and corrective measures will be implemented by USX to achieve Clean Water Act compliance according to a schedule set forth in the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States and the Commonwealth of Pennsylvania* v. *USX Corporation,* Civil Action No. 88–7346, DOJ Ref. No. 90–5–1–1–2850. The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue NW., Washingotn, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC, 20044. When requesting a copy, please present or enclose a check in the amount of $2.50 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–9617 Filed 4–20–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Maimoona Hakim Husain, M.D.; Revocation of Registration

On December 16, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Maimoona Hakim Husain, M.D., of 13957 13 Mile Road, #4, Warren, Michigan, proposing to revoke her DEA Certificate of Registration BH0708466 and to deny her application for renewal of that registration executed on September 17, 1987. The Order to Show Cause alleged that Dr. Husain's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Husain on December 29, 1988. More than thirty days have passed since the Order to Show Cause was received by Dr. Husain and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Husain has waived her opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file.

The Administrator finds that Dr. Husain was a physician licensed to practice medicine in the State of Michigan. On September 30, 1987, a felony complaint was filed by the State of Michigan charging two corporations, five doctors and six individuals with conspiracy to unlawfully deliver controlled substances, conspiracy to defraud Michigan Medicaid and Blue Cross/Blue Shield, and filing false Medicaid claims. Dr. Husain was one of the doctors against whom this complaint was filed. Individually, she faced one count each of conspiracy to deliver controlled substances, delivery of controlled substances, conspiracy to defraud Medicaid and Medicaid fraud. These charges were the result of a two-and-a-half-year investigation by the Michigan State Health Care Fraud Division which uncovered an elaborate scheme that both supplied controlled substances to drug abusive patients and defrauded the Michigan State Medicaid program of millions of dollars.

The investigative file reveals that sometime in 1985 Dr. Husain entered into an agreement with a Michael Kemp. Michael Kemp operated five American Health Center medical clinics in the Detroit area. These clinics were visited by Medicaid and Blue Cross patients who sought prescriptions for controlled substances. Many of the prescriptions issued by the clinic were for Tylenol with codeine numbers 3 and 4, both Schedule III controlled substances. In exchange for receiving these prescriptions, the patients were required to submit to a battery of tests, including blood tests, x-rays and other medically unnecessary procedures. Medicaid and Blue Cross then paid all claims for these tests to Mr. Kemp. Under Dr. Husain's agreement with Mr. Kemp, Dr. Husain received a weekly salary in return for her permitting Mr. Kemp to present claims under Dr. Husain's provider identification number. Additionally, because a licensed and registered

physician was required to sign prescriptions for controlled substances, Dr. Husain also pre-signed numerous blank prescriptions. These prescriptions would later be filled out by unlicensed employees at Mr. Kemp's clinics who held themselves out to be doctors.

Dr. Husain never saw or treated patients at any of Mr. Kemp's clinics, she merely passed the pre-signed prescriptions on to individuals who were neither qualified nor licensed to treat patients. In fact, for approximately three weeks when Dr. Husain was in the hospital to have a baby, her husband came to the clinic to bring the pre-signed prescriptions from Dr. Husain. A patient could go to each of Mr. Kemp's clinics and receive Tylenol 3 prescriptions every two weeks, regardless of his or her complaint. The most common complaint was "back pain." Lines of patients could be observed outside Mr. Kemp's clinics, each patient waiting to get controlled substance prescriptions.

Medical records seized from the clinics indicate that patients continuously received these controlled substances over an extended period of time. The prescriptions were easily available to the patients and they returned to the clinic often. One doctor advised the Michigan Health Care Fraud Division that patients should not be maintained on a codeine-based medication for any length of time because of the danger of addiction. This is common knowledge in the medical community. By pre-signing prescriptions, Dr. Husain facilitated the clinic's practice of supplying controlled substance prescriptions to patients for no legitimate justification.

On February 27, 1987, a Health Care Fraud investigator visited one of Mr. Kemp's clinics in Detroit posing as Medicaid recipient "Jackie Hamilton," faking a complaint of foot pain. Jackie Hamilton was seen by an unlicensed individual not under the supervision of any licensed physician. Jackie Hamilton was issued a prescription for Tylenol with codeine #3, signed in the name of Dr. Husain. On April 23, 1987, a claim was made to Medicaid which falsely represented that on February 27, 1987, a certain prescription for Tylenol 3 was medically necessary for the care and treatment of Medicaid recipient Jackie Hamilton.

The Administrator notes that on January 20, 1989, the Michigan Department of Licensing and Regulation suspended the medical license of Dr. Husain for a period of one year, effective January 21, 1989, and imposed a fine of $5,000. Dr. Husain is not currently licensed to practice medicine or authorized to handle controlled substances in the State of Michigan. This fact alone is sufficient to revoke her DEA registration. See: *Emerson Emery, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33148 (1984).

In addition to the fact that Dr. Husain is not authorized to handle controlled substances in Michigan, the Administrator finds that Dr. Husain's continued registration with DEA is inconsistent with the public interest. The factors which the Administrator has considered in determining whether the registration would be inconsistent with the public interest are enumerated in 21 U.S.C. 823(f). Two of the factors to be considered include the registrant's experience in dispensing controlled substances and the registrant's compliance with Federal, State or local laws relating to controlled substances. All factor need not be present for the Administrator to revoke a Certificate of Registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See *Paul Stepak, M.D.*, 51 FR 17556 (1986).

In this instance, there is no question that Dr. Husain's experience in dispensing controlled substances has been in violation of the laws and regulations relating to controlled substances. Dr. Husain has admitted, in sworn deposition testimony before the Health Care Fraud Division, that she was paid by Mr. Kemp for the use of her Medicaid and Blue Cross provider identification number and that she routinely provided Mr. Kemp with blank pre-signed prescriptions which she knew were being issued to patients for controlled substances. Dr. Husain knew that the responsibility for the ultimate quality of medical care services given to patients at Mr. Kemp's clinics lay in the unlicensed individuals who actually saw the patients. One of these unlicensed individuals who issued prescriptions with Dr. Husain's signature explicitly told Dr. Husain that she did not have a medical license. Dr. Husain did not reply, she only instructed the unlicensed individual to continue dispensing Tylenol 3. Dr. Husain deliberately closed her eyes to what must have been obvious to her, that the prescriptions she was pre-signing were filled in for controlled substances and issued to patients for other than legitimate medical need. Dr. Husain's activities with regard to pre-signing prescriptions are clearly violations of Federal and State laws relating to the proper prescribing of controlled substances.

In view of all the foregoing facts regarding Dr. Husain's experience with controlled substances, her pre-signing controlled substance prescriptions with knowledge that they would be used to dispense controlled substances, her invovlement in a conspiracy to defraud Medicaid, and the suspension of her Michigan State medical license, the Administrator concludes that Dr. Husain's DEA Certificate of Registration must be revoked. Dr. Husain's controlled substance handling activities fall far outside the bounds of legitimate practice. Registrants must handle controlled substances, and the prescriptions by which such drugs are dispensed, in a careful and prudent manner so as to prevent their misuse. Dr. Husain was clearly a participant in a scheme which caused the diversion of substantial quantities of controlled substances.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BH0708466, previously issued to Maimoona Hakim Husain, M.D., be, and it hereby is, revoked. It is further ordered that her pending application for renewal, executed on September 17, 1987, and any other outstanding applications for registration, be, and hereby are, revoked.

This order is effective May 22, 1989.

Dated: April 17, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–9564 Filed 4–20–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 28, 1989, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Pholcodine (19314)	I
Alphacetylmethadol (9603)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II

—Continued

Drug	Schedule
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid (9620)	II
Tincture of opium (9630)	II
Powered opium (9639)	II
Granulated opium (9640)	II
Mixed alkaloids of opium (pantopon) (9648).	II
Concentrate of poppy straw (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (May 22, 1989).

Gene R. Haislip

Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration.

Dated: April 14, 1989.

[FR Doc. 89-9563 Filed 4-20-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable in Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL89-1 (Jan. 6, 1989) ..... p. 2
Georgia:
GA89-4 (Jan. 6, 1989)..... p. 216
NC GA89-22 (Jan. 6, 1989) ... p. 254
North Carolina:
NC89-10 (Jan. 6, 1989)..... p. 540
New Jersey:
NJ89-2 (Jan. 6, 1989) ..... pp. 617-619, pp. 624-626
NJ89-3 (Jan. 6, 1989) ..... pp. 636-637
NJ89-4 (Jan. 6, 1989) ..... p. 659
New York:
NY89-2 (Jan. 6, 1989)..... pp. 687-688
NY89-3 (Jan. 6, 1989)..... p. 702
NY89-9 (Jan. 6, 1989)..... p. 768
NY89-11 (Jan. 6, 1989)..... pp. 782,784
NY89-13 (Jan. 6, 1989)..... p. 800
NY89-18 (Jan. 6, 1989)..... p. 828
Pennsylvania:
PA89-11 (Jan. 6, 1989) ..... p. 938
PA89-17 (Jan. 6, 1989) ..... p. 964
PA89-20 (Jan. 6, 1989) ..... p. 984
PA89-24 (Jan. 6, 1989) ..... p. 1013
South Carolina:
SC89-3 (Jan. 6, 1989)..... p. 1035
SC89-11 (Jan. 6, 1989)..... p. 1052
SC89-21 (Jan. 6, 1989)..... p. 1074
Virginia:
VA89-3 (Jan. 6, 1989)..... p. 1128
VA89-9 (Jan. 6, 1989)..... pp. 1144-1145
VA89-11 (Jan. 6, 1989)..... pp. 1150-1151
VA89-14 (Jan. 6, 1989)..... p. 1160
VA89-15 (Jan. 6, 1989)..... pp. 1164-1165
VA89-17 (Jan. 6, 1989)..... pp. 1172-1173
VA89-18 (Jan. 6, 1989)..... pp. 1176-1177
VA89-20 (Jan. 6, 1989)..... p. 1180
VA89-23 (Jan. 6, 1989)..... p. 1186
West Virginia:
WV89-2 (Jan. 6, 1989)..... p. 1211

Volume II

Indiana:
IN89-2 (Jan. 6, 1989) ..... pp. 261,266-267
Kansas:
KS89-9 (Jan. 6, 1989)..... p. 378
Missouri:
MO89-1 (Jan. 6, 1989)..... p. 629
MO89-2 (Jan. 6, 1989)..... p. 649
Ohio:
OH89-3 (Jan. 6, 1989) ..... pp. 810-814
OH89-28 (Jan. 6, 1989) ..... pp. 864-865
Texas:
TX89-30 (Jan. 6, 1989) ..... pp. 1062-1063
TX89-31 (Jan. 6, 1989) ..... pp. 1066-1067
TX89-32 (Jan. 6, 1989) ..... pp. 1070-1071
TX89-33 (Jan. 6, 1989) ..... pp. 1074-1075
TX89-35 (Jan. 6, 1989) ..... p. 1082
TX89-36 (Jan. 6, 1989) ..... pp. 1084-1085
TX89-37 (Jan. 6, 1989) ..... p. 1088
TX89-38 (Jan. 6, 1989) ..... pp. 1090-1091
TX89-39 (Jan. 6, 1989) ..... pp. 1094-1095
TX89-40 (Jan. 6, 1989) ..... pp. 1098-1099
TX89-42 (Jan. 6, 1989) ..... pp. 1102-1103

Volume III

California:
CA89-2 (Jan. 6, 1989)..... pp. 54-55
CA89-4 (Jan. 6, 1989)..... pp. 70-71, 81
Idaho:
ID89-3 (Jan. 6, 1989)..... p. 162
ID89-5 (Jan. 6, 1989)..... p. 170
Washington:
WA89-1 (Jan. 6, 1989) ..... pp. 364-365, pp. 368, 374

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th Day of April 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-9457 Filed 4-20-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: To request copies of the materials submitted to OMB for review contact Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or call (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Evaluation of Research Experiences for Undergraduates (REU) Program

Affected Public: Individuals or households.

Responses/Burden Hours: 3,829 responses—.5 burden hours each response.

Abstract: During FY 1987-88, NSF made 2,206 REU awards to provide hands-on research experiences to promising undergraduate students to encourage them to pursue graduate study in science and engineering. The study examines the impact of the program on participants, programmatic elements contributing to impact, and implementation characteristics.

Dated: April 17, 1989.

M. Rebecca Winkler,

Management Analyst.

[FR Doc. 89-9552 Filed 4-20-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the Auxiliary Feedpump Turbine Inlet Steam Pressure Interlocks. The operability and surveillance requirements for these interlocks are disassociated from the requirements for operability of the Auxiliary Feedwater Pumps, but are retained in the Technical Specifications for protection against the effects of a rupture of the steamlines to the Auxiliary Feedwater Pump Turbines.

The proposed action is in accordance with the licensee's application for amendment dated May 4, 1987, as supplemented by a letter dated April 29, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to reflect the change in system requirements resulting from modifications to increase the reliability of the Auxiliary Feedwater System.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that this change retains the function and purpose of the affected components and, therefore, does not change the probability or consequences of any accident. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 6, 1988 (53 FR 295). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves no changes to any effluents or needed resources. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological

environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Davis-Besse Nuclear Power Station, Unit 1, dated March 1973, and supplement dated October 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated May 4, 1987 and a supplement dated April 29, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 14th day of April 1989.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-9605 Filed 4-20-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454, et al.]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity For Hearing

In the matter of docket numbers 50-454, 50-455, 50-456, and 50-457.

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of amendment to Facility Operating License Nos. NPF-37 and NPF-66, issued to the Commonwealth Edison (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Facility Operating License Nos. NPF-72 and NPF-77, issued to the license for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendments would change Technical Specification 4.5.2 to modify the surveillance requirements for venting of Emergency Core Cooling System (ECCS) equipment.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulation.

By May 22, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and petitions for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practices for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any other which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained

absent a determination by the Commission, the presiding officer to the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If the request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 17, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 12th day of April 1989.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–9603 Filed 4–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–247

Consolidated Edison Co. of New York, Inc. and Indian Point Nuclear Generating Unit No. 2; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consolidated Edison Company of New York, Inc. (the licensee) to withdraw its June 22, 1987 application for proposed amendment to Facility Operating License No. DPR–26 for the Indian Point, Unit No. 2, located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications to authorize (but not require) sleeving of steam generator tubes as a repair technique. The proposed amendment did not specify the particular sleeving technique to be used.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 9, 1987 (52 FR 34002). However, by letter dated April 6, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 22, 1987, and the licensee's letter dated April 6, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 14th day of April 1989.

For The Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–9604 Filed 4–20–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 17, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Baroid Corporation
Common Stock, $0.10 Par Value (File No. 7–4483)
Matlack Systems, Inc.
Common Stock, $1 Par Value (File No. 7–4484)
NL Industries, Inc.
Common Stock, $0.125 Par Value (File No. 7–4485)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 8, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 89–9601 Filed 4–19–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—16920; 811–4966]

Vigilant Fund, Inc.; Application

April 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Vigilant Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Order requested under Section 8(f) of the 1940 Act.

Summary of Application: Applicant has requested an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 10, 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 May 11, 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 Applicant with a copy of the request, either personally or by mail. the hearing request should then be sent to the Secretary of the SEC, together with proof of service on the Applicant 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 20549. Applicant, c/o Huntoon Hastings, Inc., Riverpark, 800 Connecticut Ave., Norwalk, CT 06850.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or Stephanie M. Monaco,

Branch Chief, 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 by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Maryland corporation which registered as an open-end diversified management investment company under the 1940 Act on December 30, 1986. Applicant's registration statement under the Securities Act of 1933, filed on December 30, 1986, was declared effective on February 1, 1988. Applicant began the offer and sale of its sole series, the Select U.S. Government Collateral Series, on February 8, 1988.

2. On April 21, 1988, Vigilant Advisors, Inc. (the "Adviser") notified the Board of Directors of Applicant that the Adviser's financial condition had deteriorated, although it was attempting to secure additional financing. Applicant's disinterested directors then determined to suspend further sales of shares, and requested that the Adviser immediately place Applicant's assets in short-term, liquid money market instruments. After being informed that the Adviser had not secured additional financing, the disinterested directors conferred with Applicant's three public shareholders, who requested redemption of their shares. The redemptions were made on April 29, 1988, at the net asset value per share of $15.22. Thereafter, Applicant's sole shareholder was its Sub-Adviser, Huntoon Hastings, Inc., which had purchased Applicant's initial seed capital shares from the Adviser on February 4, 1988. The Adviser and Applicant's principal underwriter, Vigilant Distributors, Inc., have been inoperative since May 1, 1988.

3. During the remainder of 1988, the Sub-Adviser maintained Applicant's registrations and corporate existence. At a special meeting held on February 10, 1989, the Sub-Adviser informed Applicant's Board of Directors that it had determined not to sponsor or distribute Applicant's shares. The Board of Directors authorized the winding-up of Applicant's affairs, and resolved to hold a special meeting of shareholders to consider the dissolution of Applicant under Maryland law. Applicant's sole remaining shareholder, the Sub-Adviser, waived notice of the special meeting and executed a written consent to Applicant's dissolution. Applicant intends to file Articles of Dissolution after the receipt of the order requested by the application.

4. Immediately preceding the liquidation, Applicant's assets consisted solely of cash. Applicant's Statement of Assets and Liabilities as of March 31, 1989 shows net assets of $65,852.64, which amount was distributed to the Sub-Adviser on April 3, 1989 in redemption of its seed capital shares.

5. Expenses incurred in connection with the liquidation are estimated at approximately $7,000 and will be borne by the Sub-Adviser. There are no securityholders of Applicant to whom distributions in complete liquidation of their interests have not been made. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–9602 Filed 4–20–89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–5156]

Basic Investment Corp.; Revocation of License

Notice is hereby given that the License of Basic Investment Corporation (Basic), 6723 Whittier Avenue, McLean, Virginia 22101, to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act), has been revoked. Basic was licensed by the Small Business Administration on July 29, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the revocation of the License was effective on April 13, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associated Administrator for Investment.

Dated: April 17, 1989.

FR Doc. 89–9637 Filed 4–20–89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02–0044]

The Central New York Small Business Investment Co., Inc.; Surrender of License

Notice is hereby given that The Central New York Small Business Investment Co., Incorporated 351 South Warren Street, Syracuse, New York 13202 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). The Central New York Small Business Investment Co., Incorporated was licensed by the Small Business Administration on April 28, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on April 5, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 58.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: April 17, 1989.

[FR Doc. 89–9638 Filed 4–20–89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Dallas will hold a public meeting at 9:00 a.m., on Friday, May 5, 1989, at the Hyatt Regency Hotel, 300 Reunion Boulevard, Dallas, Texas 75207 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100

Commerce, Room 3C36, Dallas, Texas 75242, phone (214) 767–0600.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 13, 1989.

[FR Doc. 89–9639 Filed 4–20–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 01/01–0346]

Senior Service Capital, Inc.; Filing of an Application for a License to Operate as a Small Business Investment Co.

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Senior Service Capital, Inc., 500 Purdy Hill Road, Monroe, Connecticut 06468, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Percentage of Ownership
James A. DeSanctis, 500 Purdy Hill Road, Monroe, Connecticut 06468	Chief, Operating Officer/ Director.	9.5
Maurice C. Thompson, 500 Purdy Hill Road, Monroe, Connecticut 06468	Chief, Executive Officer/ Director.	0
John F. DiGiacomo, 500 Purdy Hill Road, Monroe, Connecticut 06468	Vice President.	0
Senior Service Corporation, 500 Purdy Hill Road, Monroe, Connecticut 06468	Shareholder.....	90.5

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Monroe, Connecticut.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Date: April 18, 1989.

[FR Doc. 89–9640 Filed 4–20–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement; Dallas/Fort Worth International Airport; Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for proposed facility improvements at Dallas/Fort Worth International Airport (DFW). DFW proposed to construct two new runways, tentatively identified as Runways 16/34 East and 16/34 West.

FOR FURTHER INFORMATION CONTACT: Agencies may contact: Ms. Mo Keane, Airport Environmental Specialist, ASW–612B, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193–0612. Telephone (817) 624–5606. Public may contact: Mr. Jeffrey Bunting, Noise Compatibility Planner, Dallas/Fort Worth International Airport, P.O. Drawer DFW, DFW Airport, Texas 75261. Telephone (214) 574–8776.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Dallas/Fort Worth International Airport Board, will prepare an Environmental Impact Statement (EIS) for airfield improvements at the Dallas/Fort Worth International Airport.

During public scoping meetings held for the Runway 16/34 East EIS, elected officials and local citizens requested that environmental studies for both Runways 16/34 East and 16/34 West be undertaken at the same time so that total impacts on respective communities could be understood. In response to public concerns, the FAA and DFW will conduct simultaneous environmental studies for both runways. Environmental consequences for both 16/34 East and 16/34 West will be evaluated simultaneously. The EIS will be divided into two sections, with one section placing particular emphasis on impacts to the communities of Irving and Coppell with regard to Runway 16/34 East, and the other section placing emphasis on impacts to the communities of Grapevine and Euless with regard to Runway 16/34 West. The format of the EIS will allow the impacts of each runway to be assessed both independently and in total. Results and conclusions reached will be presented in the EIS.

Runway 16/34 East: This proposed runway project will be accomplished through a two-phase action. Phase 1 proposes a 6,000 ft x 150 ft runway capable of accommodating commuter and general aviation traffic and limited air carrier arrivals. This runway is scheduled to be on-line in 1992. Phase 2 proposes to extend the runway to overall dimensions of 8,500 ft x 150 ft. The runway will support air carrier traffic flying routes of 2,000 nautical miles or less. Implementation of the second phase will occur near the year 2000 or as required by aviation demand.

Runway 16/34 West: This proposed project will also be accomplished through a two-phase action similar to Runway 16/34 East. Phase 1 proposes runway dimensions of about 6,000 ft x 150 ft capable of accommodating commuter and general aviation traffic and limited air carrier arrivals. This portion of the project is scheduled to be on-line near 1996. Phase 2 proposes to extend the runway to an air carrier length. The precise length is yet to be determined, but will be determined prior to finalizing the EIS. Several alternatives for 16/34 West are operationally feasible. The EIS will evaluate each alternative and lead to a final recommendation. Implementation of the second phase will occur near the year 2000 or as required by aviation demand.

The FAA intends to consult and coordinate with Federal, State, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. Three scoping meetings to discuss project magnitude and identify the scope of issues to be addressed have been accomplished for Runway 16/34 East. To solicit input from the communities, three additional scoping meetings are being scheduled to identify the scope of issues to be addressed relative to Runway 16/34 West. The first will be held for public agencies on May 22, 1989, at the Dallas-Fort Worth International Airport, Administration Building, Board Room beginning at 2 p.m. The second meeting

will be held for interested members of the public on May 22, 1989, in the Euless High School Auditorium, Euless, Texas, beginning at 7 p.m. The third meeting will be held for interested members of the public on May 23, 1989, in the Grapevine Convention Center, Grapevine, Texas, beginning at 7 p.m.

Interested persons or agencies are invited to attend the appropriate scoping meeting to identify those issues which may have significant environmental impacts.

Issued on: April 10, 1989.

Gene L. Faulkner,

Manager, Airports Planning Branch.

[FR Doc. 89-9597 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-17]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 11, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Administration (14 CFR Part 11).

Issued in Washington, DC, on April 17, 1989.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25810
Petitioner: Mountain Air Cargo, Inc.
Regulations Affected: 14 CFR 121.343(b)
Description of Relief Sought: To continue operation of the company fleet of Fokker F27-500 aircraft with its currently installed flight data recorders beyond the digital flight data recorder installation compliance date of May 26, 1989.

Docket No.: 25824
Petitioner: Mercy Medical Center Redding
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's pilots to perform the preventive maintenance function of removal and replacement of passenger seats in aircraft used in Part 135 operations.

Docket No.: 25828.
Petitioner: University of North Dakota Center for Aerospace Sciences.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To allow petitioner to exercise examining authority to recommend graduates of its flight instructor certification courses for certificates without taking the FAA flight or written test.

Docket No.: 25870.
Petitioner: Jet Express, Inc.
Sections of the FAR Affected: 14 CFR Part 93, Subparts K and S.
Description of Relief Sought: Petitioner requests an exemption from Part 93, Subparts K and S, in order to permit the operation of additional commuter flights in the high density hours at Washington National Airport. The additional slots would be used only by STOL aircraft under the Separate Access Landing System.

Docket No.: 24446.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 121.485.
Description of Relief Sought/Disposition: To extend Exemption No. 4317, as amended, that allows petitioner's members to conduct flights of less than 12 hours duration with an airplane having an additional crew of three or more pilots and an additional flight crewmember without requiring the rest period to be twice the hours flown since the last at home base rest period. Grant, April 6, 1989, Exemption No. 4317B.

Docket No.: 25732.
Petitioner: World Jet Corporation.
Sections of the FAR Affected: 14 CFR 135.89(b)(3).
Description of Relief Sought/Disposition: To allow petitioner to operate its turbojet aircraft under § 121.333(c) of the FAR. Denial, April 3, 1989, Exemption No. 5038.

Docket No.: 25665.
Petitioner: Rocky Mountain Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.293(b).
Description of Relief Sought/Disposition: To allow pilots of petitioner, having passed a competency check in a particular make and model single-engine helicopter, to extend the results of this check and be deemed competent to operate other single-engine helicopters in the same class. Denial, April 6, 1989, Exemption No. 5039.

[FR Doc. 89-9596 Filed 4-20-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Public File No. 89-02; Notice 1]

Impact of Radar Detectors on Highway Traffic Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Establishment of a public file and invitation to comment.

SUMMARY: This notice announces the avaialbility of the draft final report entitled "The Impact of Radar Detectors on Highway Traffic Safety," prepared for NHTSA by the Texas Transportation Institute under Contract No. DTNH22-87-C-05111. A public file has been created to provide an opportunity for the public to present comments on the draft final report. This research report was funded by NHTSA to determine the relationship, if any, between the use of traffic radar detection devices and highway safety. The agency seeks public review and comment on this draft final report.

DATE: Comments must be received by June 20, 1989.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments should refer to "Radar Detectors," the public file and the notice number set forth above and be submitted to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Sheehan, Chief, Police Traffic Services Division (NTS–41), National Highway Traffic Safety Administration, Room 6124, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4296.

SUPPLEMENTARY INFORMATION: The agency contracted with the Texas Transportation Institute, Texas A&M University, College Station, Texas, to conduct research and produce a report pursuant to Contract No. DTNH22–87–C–05111 concerning the impact of radar detectors on highway traffic safety. The study makes comparisons between speed distributions when a detectable radar transmission is present and when it is not. The authors of the report found that the data analyzed show an influence of radar detectors on traffic behavior when radar is present. They conclude that this influence can have a negative impact on speed enforcement, but caution that definitive conclusions about the larger issue of the relationship between detectors and traffic safety require resolution of serious methodological issue. The opinions, findings and recommendations contained in the report are those of the authors, V.J. Pezoldt and R.Q. Brackett, and do not necessarily represent those of NHTSA.

Prior to the issuance of the final report, NHTSA received an inquiry about this study and a request to make comments. In response to this request, agency decided to solicit comments from the general public. The comments will become part of the public record and will assist the agency in reaching a decision on whether or not to embrace the findings of the draft report.

Authority: 23 U.S.C. 403; delegation of authority at 49 CFR 1.50.

Issued on: April 18, 1989.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 89–9668 Filed 4–20–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89–48]

Customs Bond Cancellation Standards

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988 the Secretary of the Treasury is required to publish guidelines for cancellation of bond charges. This document publishes the Guidelines for Cancellation of Claims for Liquidated Damages currently in effect.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566–8317.

SUPPLEMENTARY INFORMATION:

Background

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), amends section 623 of the Tariff Act of 1930 (19 U.S.C. 1623) by adding at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)) the following sentence:

> In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or changes thereunder.

The text of the guidelines currently in effect for cancellation of claims for liquidated damages is set forth below.

Dated: April 14, 1989.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

I. Guidelines for Cancellation of Claims for Liquidated Damages for Late Filing of Entry Summary Claims (19 CFR 142.15)

Pursuant to § 172.22(d) of the Customs Regulations, claims for liquidated damages for failure to file entry summaries timely shall be issued and mitigated as follows:

A. Modified CF 5955A

Notices of liquidated damages incurred shall be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

1. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. Option 2. The second option is to file a petition seeking presumably more relief than would be had by paying the mitigation amount specified.

a. When the entry summary is late by less than 30 days, the district or area director shall grant further relief only when the petitioner has demonstrated:

i. The violation did not occur, or

ii. The violation occurred solely as a result of Customs error (Customs cannot be contributorily negligent in late file cases)

b. When the entry summary is late by 30 days or more, the district or area director may consider the following factors in response to a petition for further relief:

i. The circumstances causing the delay;

ii. The extent of the lateness;

iii. The amount of duty involved (the higher the amount of withheld duty the greater the advantage to the violator, and as a corollary, the longer it is withheld the greater still the advantage);

iv. The past record of the importer or broker in filing entry summaries timely;

v. The lack of intent to file the entry summary timely;

vi. Ordinarily, mitigation granted under Option 2 shall not be in an amount less than that determined in accordance with Option 1 unless extraordinary mitigating factors are presented.

B. Calculation of Mitigated Amount

The amounts to be set forth under Option 1 on the CF 5955A shall be calculated as follows:

1. Dutiable entry summary filed late.

The importer of record shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of .1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded *up* to the next dollar. For purposes of this calculation, the duty amount shall be rounded *down* to the next dollar.

2. Duty free entry filed late—$100.

3. Dutiable entry rejected and refiled late with no withheld duty—$100.

4. Dutiable entry filed timely but rejected, refiled late with additional duty owed reflecting duty withheld—$100 plus interest calculated on withheld duty only.

C. Date-Stamping or Receipt System

Entries will be time-stamped in accordance with instructions issued in Customs Directive 3550–24, dated September 8, 1987.

D. Entry Summary Not Filed

If at the time the demand for liquidated damages is issued the entry summary has not been filed, no mitigated amount shall be offered under Option 1. A prerequisite for any mitigation under these guidelines is that the principal file the entry summary and deposit the duty or that the surety deposit the duty. No demand will be mitigated until the summary is filed and/or the duty deposited as stated above. Failure to present the duty check will be treated as a non-filing.

Once the duties have been paid, or, if a non-file has been outstanding for 30 days, a late filing notice will be issued. The late filing claim issued as a result of a non-filing situation shall be cancelled in accordance with the following (however, in no case shall a late filing claim be cancelled before the summary is filed and/or duties deposited in settlement of the non-file):

1. Dutiable entry—

a. The importer of record shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of .1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded *up* to the next dollar. For purposes of this calculation, the duty amount shall be rounded *down* to the next dollar.

b. If an amount equal to the withheld duties was paid by the surety, the surety shall be charged an administrative fee of $200 plus .1 percent (.001) per calendar day between the date of the demand for duties made against surety and the date of payment of those duties.

2. Non-dutiable entry—$200.

3. **Note:** If a non-filing claim is issued and duties are not paid within 30 days, a late filing claim should be issued without an Option 1 amount. Only petitions will be reviewed and the claims will be cancelled in a manner consistent with these guidelines (payment of duties plus $200 plus the appropriate interest charge).

E. Second Offenses

These guidelines provide for charging an administrative fee plus interest for each late filing case. Accordingly, the fact that a violation is a second or subsequent offense is important only to determine an importer's record within the context of A(2)(b)(vi) above. If an importer frequently abuses his privileges and fails to meet his obligations under immediate release procedures, steps should be taken in accordance with the Regulations and existing policy directives to suspend those privileges. In the alternative, the District Director may choose to assess liquidated damages but not offer an Option 1 alternative. In these cases, consultation with Headquarters, Penalties Branch, shall occur to determine appropriate mitigation.

II. Guidelines for Cancellation of Claims for Liquidated Damages for Violation of Temporary Importation Bonds (19 CFR 10.39)

A. Cancel without payment if:

1. Breach was for the benefit of the United States.

2. Breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated, i.e., destruction by fire.

3. Merchandise would have been entitled to free entry as domestic products exported and returned.

B. If the merchandise was exported or destroyed, but not within the bond period, or if it was exported but not under Customs supervision (if required), or if it was timely exported or destroyed by Customs was not timely notified so as to cancel the bond:

1. Cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the bond amount (depending on aggravating or mitigating factors present), but not less than $100.

2. Examples of aggravating factors:

a. Importer is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the importer in relation to the total number of transactions engaged in.

c. Experience in importing.

d. Importer's willful disregard or carelessness toward responsibilities under applicable statutes, regulations, or bond.

3. Examples of mitigating factors:

a. Contributory Customs error, e.g., importer demonstrates that he acted in accordance with instructions given by Customs personnel.

b. Importer cooperates with Customs personnel in resolution of the case.

c. Importer takes immediate remedial action.

d. Lack of experience in importing.

e. A small number of violations of this type in relation to the number of transactions engaged in.

C. Grant no relief from the claim for liquidated damages in the following cases:

1. When the merchandise has entered into the commerce of the United States. If petitioner claims the articles have been exported or destroyed and does not present satisfactory evidence thereof, articles shall be deemed to have entered the commerce.

2. When the importer requests that a TIB entry be amended to a consumption entry after the merchandise has been released from Customs custody.

3. When TIB merchandise is sold and not exported.

D. Grant relief equal to one times the duty on merchandise which is sold but later exported.

III. Guidelines for Cancellation of Claims for Shortage, Irregular Delivery, Non-Delivery or Delivery Directly to the Consignee of In-Bond Merchandise (19 CFR 18.8)

A. Documents Filed Late or Merchandise Delivered Late

1. If merchandise is delivered untimely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, cancel the claim upon payment of an amount between $100 and $500 depending on the presence of aggravating or mitigating factors.

2. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, cancel the claim upon payment of an amount between $100 and $500 depending on the presence of aggravating and mitigating factors.

3. If the bonded carrier consistently fails to timely deliver paperwork and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, shall be sought to determine appropriate mitigation.

B. Failure to Deliver or Shortage

Customs records indicate that merchandise was not delivered, or was delivered short.

1. If the carrier shows that the merchandise was entered and duty was paid (on an IT) of that the merchandise was exported but not in accordance with regulation (on a T&E or Direct Export), the claim may be cancelled upon payment of amount between $100

and $1,000 depending on the presence of aggravating and mitigating factors.

2. If the bonded carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.

3. If the carrier cannot prove that the merchandise was entered and duty paid or that it was properly exported or that it was never received or landed, the claim should be cancelled upon payment of an amount equal to the duties that would have been due on the subject merchandise had it been properly entered plus an amount between $100 and $1,000.

4. If the merchandise which has not been delivered is free of duty, cancel the claim upon payment of an amount between $100 and $1,000 depending on the presence of aggravating and mitigating factors.

6. If the bonded carrier consistently has shortages and failure to deliver cases and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, shall be sought to determine appropriate mitigation.

C. Delivery of Merchandise Directly to the Consignee

1. If the carrier can show that the merchandise was entered and duty paid, the claim may be cancelled upon payment of an amount between $100 and $1,000 depending on the presence of aggravating and mitigating factors.

2. If the carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.

3. If the carrier can neither prove that the merchandise was entered and duty paid nor that the merchandise was never received or landed, the claim should be cancelled upon payment of an amount equal to the duties that would have been due on the subject merchandise had it been properly entered plus an amount between $100 and $1,000.

4. If the merchandise which has been delivered directly to the consignee is free of duty, cancel the claim upon payment of an amount between $100 and $1,000 depending on the presence of aggravating and mitigating factors.

5. If the bonded carrier consistently delivers bonded merchandise directly to the consignee, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, ORR, Penalties Branch shall be sought to determine appropriate mitigation.

D. Aggravating Factors Include (But Are Not Limited To)

1. Violator refuses to cooperate with Customs or acts to impede Customs action on the case.

2. Violator experienced in handling in-bond shipments of the type in question.

3. Large number of violations in relation to total number of the same type of in-bond shipments handled by the violator, i.e., a frequent violator.

E. Mitigating Factors

1. Violator inexperienced in handling in-bond shipments of the type in question.

2. Small number of violations in relation to total number of the same type of in-bond shipments handled by the violator, i.e., violations are infrequent.

3. Violator demonstrates remedial action to prevent future violations has been taken.

4. Evidence of contributory Customs error.

5. Circumstances intervened that were beyond carrier's control (untimely delivery cases only).

a. Act of God (related to weather or some other natural cause).

b. An act of war or terrorism.

c. **Note:** Human failure by the carrier or any agent of the carrier shall not be considered as a circumstance beyond the carrier's control.

IV. Guidelines for Cancellation of Claims Involving Failure To Redeliver Merchandise Into Customs Custody or Failure To Comply With a Notice of Refusal of Admission Issued by Another Government Agency (19 CFR 141.113 or 113.62(e))

A. Statutes and Regulations Enforced on Behalf of FDA and CPSC

1. The provisions of 21 CFR 1.97 (FDA Regulations) and 16 CFR 1500.271 (CPSC Regulations) require that the District Director of Customs and the other applicable agency be in agreement as to the amount to be accepted in cancellation of the claim for liquidated damages. Accordingly, by regulation Customs must follow the recommendation of other agency.

2. Exception: When the sole requirement which has been imposed by the Food and Drug Administration is exportation or destruction under Customs supervision, apply guidelines to be used in the case of other Customs statutes or regulations (subparagraph I of these guidelines). See 21 CFR 1.97 and HQ Ruling 617367.

3. If there is sufficient reason to depart from the recommendation of the other agency, state such reason in a referral memorandum and forward the case to Headquarters, Penalties Branch.

4. **Note:** Pursuant to T.D. 82–20, Customs must follow the Department of Commerce recommendation in redelivery cases involving failure to obtain export certificates for EC steel.

B. Statutes and Regulations Enforced on Behalf of Other Agencies (Not FDA or CPSC

1. As a rule, follow recommendation of other agency.

2. Customs is not required by regulation to follow the recommendation of agencies other than FDA and CPSC. If the District Director finds the recommendation of the other agency to be arbitrary and capricious, he may modify the recommendation to be consistent with Customs guidelines.

C. Marking Cases

Merchandise Marked With the Country of Origin After Liquidation of the Entry and Outside the 30-day Marking Period

1. If merchandise is marked outside the 30-day marking period and after liquidation of the entry, marking duties should be assessed and collected.

2. If marking duties have been assessed and collected, cancel the claim upon payment of one percent of the value, but not less than $100.

3. The above mitigation should be afforded to first-time violators.

4. Grant no relief in any case until marking duties are assessed and collected; however if liquidation is final and marking duties cannot be assessed, cancel upon payment of an amount between 10 and 15 percent for a first violation and 15 and 35 percent for a subsequent violation.

5. For subsequent violations where marking duties are assessed and collected, cancel upon payment of between 5 and 25 percent of the value depending upon the number of violations and the presence of aggravating and mitigating factors.

D. Marking Cases

Merchandise Marked Outside the 30-day Period but Before Liquidation

1. If merchandise is properly marked with the country of origin outside the 30-day period but before liquidation of the entry, liquidated damages are appropriate, but marking duties are *not* due.

2. For a first-time violation, if the merchandise has been marked under Customs supervision outside the 30-day

period, cancel upon payment of 1 percent of the value, but not less than $100.

5. For subsequent violations, cancel upon payment of between 5 and 25 percent of the value depending upon the number of violations and the presence of aggravating and mitigating factors.

E. Marking Cases

Merchandise Not Marked

1. Relief from liquidated damages incurred is contingent upon deposit of marking duties. See 19 CFR 134.54(c).

2. If it is a first-time violation and marking duties have been assessed and collected, cancel the claim upon payment of between 10 and 25 percent of the value depending on the presence of aggravating or mitigating factors.

3. If it is a subsequent violation and marking duties have been assessed and collected, cancel upon payment of an amount between 25 and 50 percent of the value of the merchandise.

4. If marking duties have been assessed but not collected, grant no relief. If liquidation is final, thereby barring their assessment, cancel upon payment of no less than 50 percent of value.

5. Examples of aggravating factors:

a. Offender is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the offender in relation to the total number of transactions engaged in.

c. Offender's experience in importing.

d. Offender's willful disregard or carelessness toward responsibilities under applicable statutes of regulations.

6. Examples of mitigating factors:

a. Contributory Customs error, e.g., offender demonstrates that he acted in accordance with instructions given by Customs personnel.

b. Offender cooperates with Customs personnel in resolution of the case.

c. Offender takes immediate remedial action.

d. Offender's lack of experience in importing.

e. A small number of violations of this type by the offender in relation to the number of transactions engaged in.

F. Quota/Visa Merchandise

1. If the importer fails to redeliver visa merchandise, but subsequent to assessment of the claim produces a valid visa or visa waiver, cancel the claim upon payment of between one and five percent of the value of the merchandise (but not less than $100), depending upon the presence of aggravating or mitigating factors.

2. If no visa is ever produced, and it is a first-time violation, cancel the claim upon payment of between 20 and 30 percent of the value, depending upon the presence of aggravating or mitigating factors.

3. If no visa is ever produced, and it is a subsequent violation, cancel the claim upon payment of no less than 50 percent of the value.

4. If the importer fails to redeliver quota merchandise, and it is a first-time violation, cancel the claim upon payment of an amount between 25 and 50 percent of the value, depending on the presence of aggravating or mitigating circumstances.

5. For subsequent quota redelivery violations, cancel the claim upon payment of no less than 50 percent of the value.

6. For merchandise which is subject to both quota and visa restrictions (some textiles are so subject), follow quota guidelines in cancelling liquidated damages.

G. Copyright Violative Merchandise

1. If the importer fails to redeliver the merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise by the copyright holder, cancel the claim upon payment of between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the copyright holder, cancel a first-time violation upon payment of betwen 25 and 50 percent of the value, depending upon the presence of aggravating or mitigating factors.

3. For subsequent violations without authorization of the copyright holder, cancel upon payment of an amount equal to no less than 50 percent of the value. In order to receive any releif, extraordinary mitigating factors must be shown.

H. Trademark Violative Merchandise

1. If the importer fails to redeliver the merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise by the trademark holder, cancel the claim upon payment of between one and five percent of the value of the merchandise, but no less than $100.

2. If no authorization is received from the trademark holder, cancel a first-time violation upon payment of between 25 and 50 percent of the value, depending upon the presence of aggravating or mitigating factors.

3. For subsequent violations without authorization of the trademark holder, cancel upon payment of an amount equal to no less than 50 percent of the value.

4. As a general rule, if the merchandise is counterfeit, no relief shall be granted. If the merchandise is genuine, that fact shall be considered a mitigating factor in accordance with the above guidelines.

I. Other Customs Statutes and Regulations

1. For a first time violation, cancel the claim upon payment of between one and five percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

2. For subsequent violations, cancel the claim upon payment of between 10 and 20 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. If the issue is Customs supervision of exportation or destruction of merchandise which is the subject of a notice of refusal of admission issued by FDA of CPSC and such exportation or destruction occurs, but not under supervision, cancel in accordance with subparagraph H.1.

4. If exportation or destruction never occurs, grant no relief.

V. Guidelines for Cancellation of Claims Arising From Failure to Provide Missing Documents (19 CFR 113.42)

A. The regulatory provisions which permit cancellation of the bond upon payment of $25 are discretionary. In lieu of following such provision, the following guidelines should be used.

B. Issuance of Modified CF 5955A. A modified CF–5955A similar to that issued in cases involving late filing of entry summaries shall be issued in missing document cases.

C. Option 1

1. Petitioner may pay a specified sum within 60 days and the case will be closed.

2. Such payment shall act as a waiver of his right to file a petition.

D. Option 2

1. Normal petitioning procedures are in effect.

2. Mitigation shall not be permitted to an amount lower than that afforded under Option 1 unless extraordinary mitigating factors can be shown.

3. Petitions shall be limited to the following issues:

a. Circumstances causing the delay in filing of the document.

b. Extent of the lateness.

c. Past record of the importer.

d. Lack of intent to file documents untimely.

E. When a claim for liquidated damages is issued and the missing documents have not been provided (as opposed to being provided untimely), a modified 5955A should not be issued.

F. Calculation of Mitigated Amount.

1. Document other than invoice filed late—cancel upon payment of $100.

2. Invoice filed late:

a. No resulting duty advance—cancel upon payment of $100.

b. Resulting duty advance—cancel upon payment of $100 plus .1 percent of amount of duty advance for each calendar day late.

3. Document not filed:

a. If absence of document will not affect duty due, cancel upon payment of $200.

b. If absence of document impedes Customs ability to appraise merchandise, cancel upon payment of $200 plus further duties determined to be owing after a reasonable appraisal of merchandise is made by Customs.

4. Document upon which a claim of conditionally free or reduced duty entry is based.

a. Filed late—Cancel upon payment of $100 plus .1 percent per calendar day late of duty that would have been due had the entry been liquidated as fully dutiable. This mitigation is not affected by the fact that the late filed documents substantiated the conditionally free or reduced duty claim.

b. Non-filing

i. For the first violation cancel upon payment of $200 plus request liquidation of the entry as fully dutiable.

ii. For second or subsequent violation, cancel upon payment of $400 plus liquidate the entry as fully dutiable.

c. If there is a continuing course of conduct by an importer where conditionally free entry is claimed, but documents supporting such claim are regularly missing from the entry and are not provided, the presumption after the fourth violation shall be one of bad faith in the filing of the entry as conditionally free. No relief from the claim should be afforded.

d. If the violator is a broker, a civil monetary penalty under Title 19, United States Code, section 1641, may be appropriate.

G. Second or Subsequent Offenses.

Except as noted in section V(F)(5)(c), second or subsequent offenses will not be considered in cancellation of claims other than as relating to importer's past record in consideration of petitions for relief.

VI. Guidelines for Cancellation of Claims Arising From Failure to Timely File Shipper's Export Declarations (15 CFR 30.24)

A. Assessment Amounts

1. $50 per day for each of first three days late.

2. $100 per day for each day late beyond 3.

B. Mitigation Guidelines

1. First Offense—cancel upon payment of 50 percent of the claim but not lower than $100.

2. Second Offense—cancel upon payment of 75 percent of the claim but not lower than $100.

3. Third and Subsequent Offenses—no mitigation.

4. NOTE: All claims assessed for $50 or $100 (1 or 2 days late) will receive no mitigation.

VII. Guidelines for Cancellation of Claims Arising From Violations of Warehouse Proprietor's Bond (19 CFR Part 19)

A. "Defaults involving merchandise" includes violations involving merchandise which:

1. Cannot be located or accounted for in a bonded warehouse;

2. Has been removed from a bonded warehouse without a proper Customs permit;

3. Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:

a. Without proper Customs permit;

b. Not in accordance with the description of the activity in the permit; or

c. In the case of Class 6 warehouses, not manufactured in accordance with the formula specified in § 19.13(e) of the Customs Regulations.

B. "Defaults not involving merchandise" is defined as any instance of failure, other than on involving merchandise, to comply with Customs laws and regulations. The same act shall not be regarded as both a default involving merchandise and default not involving merchandise.

C. Defaults involving merchandise should be processed in accordance with the following:

1. If the breach resulted from a clerical error or mistake (a non-negligent inadvertent error), and liquidated damages have been assessed, the obligation may be cancelled upon payment of:

a. Ten percent of the value of any restricted merchandise involved in the default.

b. Three percent of the value of any other merchandise (i.e., not restricted or prohibited merchandise).

c. In any case where merchandise cannot be located or accounted for in the warehouse, and a withdrawal for consumption has not been filed or the merchandise has not been returned to Customs custody, an amount equal to the duties and taxes applicable to the merchandise.

2. If the breach resulted from negligence, the obligation may be cancelled (depending on the presence of aggravating or mitigating factors) upon payment of:

a. Not less than 50 percent of the value nor more than 150 percent of the value in the case of restricted merchandise.

b. Not less than 15 percent of the value nor more than 50 percent of the value of any other merchandise (i.e., not restricted or prohibited merchandise).

c. In the case of merchandise which cannot be located or accounted for in a warehouse, cancellation of the claim shall not be for less than an amount which is equal to duties and taxes accruing on the merchandise unless a withdrawal for consumption is filed or the merchandise is redelivered to Customs custody.

3. If the breach was intentional there will be no relief from liquidated damages.

4. Aggravating factors:

a. Principal's failure or refusal to cooperate with Customs.

b. Large number of violations compared to number of transactions handled.

c. Experience of principal.

d. Principal's carelessness or willful disregard toward its responsibilities.

e. Merchandise not returned to Customs custody or duties and taxes not paid thereon.

5. Mitigating factors:

a. Contributory error by Customs or by a party independent of the principal.

b. Small number of violations compared to number of transactions handled.

c. Remedial action taken by principal.

d. Cooperation with Customs.

e. Lack of experience of principal.

f. Merchandise returned to Customs custody or duties and taxes paid.

D. Defaults not involving merchandise should be cancelled in accordance with the following guidelines:

1. If the breach resulted from clerical error, the claim may be cancelled upon payment of $50 per default.

2. If the breach resulted from negligence, the claim may be cancelled upon payment of not less than $100 or more than $250 per default, depending on the presence of aggravating or mitigating factors.

3. If the breach was intentional, no relief shall be granted.

VIII. Cancellation of Claims for Liquidated Damages Arising From Violation of Airport Security Regulations (19 CFR 122.14)

A. Failure to conduct a background investigation or failure to retain background investigation records.

1. No mitigation unless extraordinary mitigating circumstances exist.

2. An example of an extraordinary mitigating circumstance would be destruction of records by fire or act of God.

B. Unauthorized entry into secured area, failure to openly display or possess identification card, strip or seal or failure to surrender identification upon demand by an authorized Customs officer.

1. First violation—cancel upon payment of $200.

2. Second violation—cancel upon payment of $500.

3. Third or subsequent violation—No mitigation.

C. Failure to return, failure to report loss or theft of identification card, strip or seal or failure to notify district director that employee no longer requires access to a secured area.

1. First violation—cancel upon payment of $500.

2. Second or subsequent violation—No mitigation.

D. Presentation of an identification card, strip or seal by a person other than to whom it was issued.

1. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor used the card, strip or seal in an improper manner and it had given warnings about such conduct to all its employees, agents or contractors.

2. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in D. 1. above, cancel upon payment of $200.

3. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

E. Refusal of an employee to obey any proper order of a Customs officer or any Customs order, rule or regulation.

1. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee had acted contrary to a proper order, rule or regulation and it had given warnings about such conduct to all its employees.

2. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in E.1. above, cancel upon payment of between $200 and $500.

3. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

F. The district director has discretion to permit greater mitigation than that permitted in the guidelines in cases involving a third or subsequent violation if the bond principal after a first or second violation, takes remedial action and does not incur a violation for a period of six months.

IX. Guidelines for Cancellation of Claims for Liquidated Damages for Violation of Foreign Trade Zone Regulations (19 CFR Part 146)

A. "Default involving merchandise" includes merchandise which:

1. Cannot be located or accounted for in the activated area of a foreign trade zone;

2. Has been removed from the activated area of the zone without a proper Customs permit; of

3. Has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:

a. Without proper Customs permit; or

b. Not in accordance with the description of the activity in the Customs permit.

B. "Default not involving merchandise" means any instance of failure, other than one involving merchandise or late payment of the annual fee, to comply with the law or regulations governing foreign trade zones. A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.

C. Cancellation of claims for liquidated damages involving merchandise.

1. If the breach resulted from a clerical error or mistake (a non-negligent or inadvertent error) cancel upon payment of:

a. One percent of the value of merchandise wholly in domestic status (as defined in 19 CFR 146.1(b)(10)) for which a Customs permit is required, not to exceed $500 per claim.

b. Ten percent of the value of restricted or prohibited merchandise.

c. Three percent of the value of other merchandise (i.e., not prohibted, restricted or domestic status) per default, not to exceed $1,000 per claim.

2. If the breach resulted from negligence, cancel upon payment of:

a. Not less than 2 percent or more than 5 percent of the value of domestic status merchandise for which requires a Customs permit, not to exceed $1,500 per claim.

b. Not less than 40 percent nor more than 100 percent of the value of merchandise in the case of restricted merchandise.

c. Not less than 20 percent nor more than 35 percent of the value in the case of other merchandise (i.e., not prohibited, restricted or domestic status).

3. If the breach was intentional, grant no relief.

D. Cancellation of claims for liquidated damages not involving merchandise.

1. If the breach resulted from clerical error, the claim may be cancelled upon payment of $50 per default.

2. If the breach resulted from negligence, the claim may be cancelled upon payment of not less than $100 or more than $250 per default, depending on the presence of aggravating or mitigating factors.

3. If the breach was intentional, no relief shall be granted.

E. Cancellation of claims for late payment of the annual fee.

1. If the late payment resulted from a clerical error or mistake, the claim my be cancelled upon payment of the amount due but not paid plus one-fourth of one percent per day for each calendar day payment is in arrears.

2. If the late payment resulted from negligence, cancel upon payment of the amount due but not paid plus the following percent of that amount for each day payment is in arrears:

a. First seven calendar days—not less than one-third of one percent nor more than three-fourths of one percent per day.

b. Second seven calendar days—not less than 1 and one-third percent nor more than 1 and three-fourths percent per day.

c. After the fourteenth calendar day—not less than 2 and one-third nor more than 2 and three-fourths percent per day.

3. If the late payment was intentional, no relief shall be granted.

F. Aggravating and mitigating factors listed in the guidelines for cancellation of warehouse bond violations are applicable to foreign trade zone bond violations.

X. Guidelines for Cancellation of Claims Arising From the Failure to Hold Merchandise at the Place of Examination (19 CFR 113.62(f))

A. The following guidelines are applicable to first-time violations for failure to deliver merchandise to or hold merchandise at the place of examination and the merchandise involved in the violation is neither prohibited nor restricted:

1. Merchandise not delivered or held as a result of clerical error, and an entry summary is filed with estimated duties paid, cancel upon payment of between $100 and $500.

2. Merchandise not delivered or held as a result of clerical error, but neither is an entry summary filed nor estimated duties paid, cancel upon payment of an amount equal to the estimated duties plus $100 to $500.

3. Merchandise not delivered or held as a result of negligence, and an entry summary is filed and estimated duties are paid, cancel upon payment of an amount equal to estimated duties or $1,000, whichever is greater.

4. Merchandise not delivered or held as a result of negligence, but neither is an entry summary filed nor an amount equal to the estimated duties paid, cancel upon payment of an amount equal to three times the estimated duties or $3,000, whichever is greater.

5. Intentional violation, cancel upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In no case can mitigation afforded for an intentional violation be more generous than that afforded for a negligent violation.

B. Second or subsequent violation for merchandise that is not delivered to or held at the place of examination and the merchandise involved in the violation is neither prohibited nor restricted:

1. If the violation results as a matter of clerical error, cancel upon payment of an amount that is not less than double that taken for a first violation.

2. If the violation results as a matter of negligence, cancel upon payment of an amount that is not less than double that taken for a first violation.

3. Intentional violation, grant no relief.

C. Any violation involving failure to deliver merchandise to or hold merchandise at the place of examination and the merchandise involved is prohibited or restricted:

1. Clerical error—cancel upon payment of an amount equal to no less than 25 percent of the value of the merchandise or, if the duty rate is in excess of 25 percent, an amount equal to estimated duties, but not less than $4,000.

2. Negligence—cancel upon payment of an amount equal to no less than 75 percent of the value of the merchandise, but not less than $10,000.

3. Intentional—grant no relief.

D. Failure to keep any Customs seal or cording intact until the merchandise is examine.

1. Clerical error—cancel upon payment of $100.

2. Negligence—cancel upon payment of $500.

3. Intentional—grant no relief.

[FR Doc. 89-9505 Filed 4-20-89; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; American Fidelity Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Fidelity Insurance Company, of Oklahoma City, Oklahoma, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25054, July 1, 1988.

With respect to any bonds currently in force with American Fidelity Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washingtron, DC 20227, telephone (202) 287–3921.

Dated: April 14, 1989.

Mitchell A. Levine

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-9598 Filed 4-20-89; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Cir. 570, 1988—Rev., Suppl. No. 11]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; The Camden Fire Insurance Association

Notice is hereby given that the Certificate of Authority issued by the Treasury to The Camden Fire Insurance Association of Philadelphia, PA, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25058, July 1, 1988.

With respect to any bonds currently in force with The Camden Fire Insurance Association, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: April 17, 1989.

[FR Doc. 89-9599 Filed 4-20-89; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1988—Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Cigna Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Cigna Insurance Company, of Philadelphia, Pennsylvania, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25058, July 1, 1988.

With respect to any bonds currently in force with Cigna Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC. 20227, telephone (202) 287–3921.

Dated: April 14, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-9600 Filed 4-20-89; 8:45 am]

BILLING CODE 4810-35-M

Office of Foreign Assets Control

License Applications for Travel and Family Remittance Services Related to Cuban Travel

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of

Foreign Assets Control invites public comment concerning the fitness and qualification of license applicants. In addition, this notice informs the public of the identity of the only travel service providers and family remittance forwarders currently authorized to provide such services.

DATE: Comments must be submitted on or before June 20, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 376-0400, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376-0236, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR Part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding or remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii). The Regulations were further amended on April 6, 1989, 54 FR 13881, to indicate the procedures and criteria applicable to the issuance, denial, suspension or revocation of a license.

As of April 21, 1989, 43 completed license applications have been filed with the Office of Foreign Assets Control. Pursuant to 31 CFR 515.560(i)(3), these applicants, listed below, have been granted provisional authority to provide services pending review of their completed license applications. Only applicants operating under provisional authority and listed below may provide travel services or family remittance forwarding services at this time.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to collect appropriate information to evaluate the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging different amounts based on the financial means of travelers) with regard to the provision of or payment required for accommodations and meals, or other services provided in connection with travel to, from, or within Cuba;

2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Cuban Assets Control Regulations, namely, family remittances to close relatives in amounts not to exceed $500 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed $500 to any one payee; and

3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Room 400, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

List of Applicants for Licenses to Perform Travel and Family Remittance Forwarding Services:

Principal officer (if applicant is incorporated); Name of applicant (company name or individual); Address (as supplied by applicant)	Branch office(s); Travel service provider ("TSP"); Family remittance forwarder ("FRF")
Agencia Via Cuba, Estrella Santos, 3009 E. Florence Ave., Huntington Park, CA 90255.	TSP, FRF.
Airline Brokers Co., Vivian Mannerud, 888 Douglas Entrance #160, Coral Gables, FL 33134.	TSP.
Alamar Department Store, Inc., Sotero Machin, 1806 Sunset Blvd., Los Angeles, CA 90026.	FRF.
Almacen el Espanol, Augusto P. Rodriguez, 1359 SW. 1st St., Miami, FL 33135.	FRF. 1169-99 W. 27th St., Hialeah, FL 33012 602 N.W. 27th Ave., Miami, FL 33135.
Ameis Travel Agency, Edmundo Garcia-Torres, 218 48th St., Union City, NJ 07087.	TSP.
Armada Enterprise, Raul Armada, 421 57th St., West New York, NJ 07093.	FRF.
Barbara's Enterprises, Barbara Proenza, 5841 Dahlia Drive #2, Orlando, FL 32807.	TSP, FRF.
Bizjet, Inc., Wayne Turnquist, S1500 Perimeter Road, West Palm Beach, FL 33406.	TSP.
Buro de Servicios Comunitarios, Inc., Hilda Diaz, 250 W. 57th St., New York, NY 10107.	TSP, FRF.
Capritur, Inc., Waldo Luis Valdes-Salvat, 434 65th St., West New York, NJ 07093.	TSP, FRF.
Caribbean Agency, Inc., Jorge Fernandez, 3686 Olive St., Las Vegas, NV 89104.	FRF.
Caribe Viajes y Envios, Inc., Jorge Fernandez, 4315 NW. 7th St. #43, Miami, FL 33126.	TSP, FRF.
Caribe Viajes y Envios Num 2, Inc., Jorge Fernandez, 4238 W. 16th Ave., Hialeah, FL 33012.	TSP, FRF.
Le Club Travel, Inc., Hector Martinez Puldon, 1708 W. 68th St., Hialeah, FL 33014.	TSP, FRF.
Costa Cuba Inc., Dalia Perez, 9732 SW. 40th Street, Miami, FL 33165.	TSP, FRF.
Cuba Envios, Inc., Carmen Ordenes, 4700 NW. 7th St., #8, Miami, FL 33126.	FRF. 484 Palm Ave., Hialeah, FL 33010. 1171 W. 29th St., Hialeah, FL 33012. 4811 NW. 183rd St., Miami, FL 33055. 7216 SW. 8th St., Miami, FL 33144. 9766 SW. 24th St., Miami, FL 33165.
Cuba Paquetes, Inc., Milton Serret, 1087-A West 29th St., Hialeah, FL 33012.	TSP, FRF.
Espanol Accounting Service, Orlando Sierra, 2644 N. Milwaukee Ave., Chicago, IL 60647.	TSP, FRF.
El Espanol Corporation, Augusto C. Rodriguez, 8938 SW. 40th St., Miami, FL 33165.	FRF.
Exportaciones Cubancan Inc., Jose S. Mesa, 2319 NW. 7th St., Miami, FL 33125.	FRF.
Juan A. Hernandez, 10629 SW. 68 Terr., Miami, FL 33713.	TSP, FRF.

Principal officer (if applicant is incorporated); Name of applicant (company name or individual); Address (as supplied by applicant)	Branch office(s); Travel service provider ("TSP"); Family remittance forwarder ("FRF")
Iracuba Corp., Lazaro Guillen, 1700 SW. 57th Ave #206, Miami, FL 33155.	TSP, FRF.
Key Largo Air Service, Patricia Barnes, 28720 SW. 217th Ave., Homestead, FL 33030.	TSP.
Machi Community Services, Maria S. Brieva, 4864 NW. 7th Street, Miami, FL 33126.	TSP, FRF.
Marazul Charters, Inc., Francisco G. Aruca, 13889 South Dixie Highway, Miami, FL 33176.	TSP. 250 W. 57th St. #1311, New York, NY 10107.
Marazul Tours, Inc., Hilda Diaz, 250 W. 57th St. 1311, New York, NY 10107.	TSP.
Media Travel USA, Rich Schneider, 111 U.S. Highway One, Tegeusta, FL 33469.	TSP.
Miami-Cuba Envios, Inc., Alfonso Lozada, 13851 SW. 16th St., Miami, FL 33184.	TSP, FRF. 801 W. 49th St. #246, Hialeah, FL 33012.
National Jets, Inc., Thomas E. Boy, 902 SW. 34 St., Fort Lauderdale, FL 33315.	TSP.
New Miami International Import-Export, Corp., Alberto Rodriguez, 4800 NW. 7th St., Miami, FL 33126.	TSP, FRF. 692 W. 29th St. #7, Hialeah, FL 33010. 9656 Coral Way, Miami, FL 33165. 605 Belvedere Rd. #12, W. Palm Beach, FL 33405. 339A 47th St., Union City, NJ 07087.
Pan American Trade, Enrique Gomez, 647 Linden Ave., Ridgefield, NJ 07657.	FRF.
Paradise International, Inc., Jesus G. Rodriguez, 1111 SW. 8th St. #204, Miami, FL 33130.	TSP, FRF.
Armando Ramirez, 3057 W. Hillsborough Ave., Tampa, FL 33614.	TSP, FRF.
Sam Immigration Agency & Tours, Hilda Martinez, 6818 Pacific Blvd. Suite E, Huntington, Park, CA 90255.	FRF.
Solymar Tours Corp., Marisolalba Sanchez, 530 57th St., West New York, NJ 07093.	TSP, FRF.
Trans-Cuba, Inc., Iris Diaz, 2500 SW. 107th Ave. #30, Miami, FL 33165.	TSP, FRF. 4375 W. 16th Ave., Hialeah, FL 33012. 701 SW. 27th Ave., Miami, FL 33135.
Tropicuba, Inc., Grace Padron, 2176 NW. 7th St., Miami, FL 33125.	TSP, FRF.
VA Cuba, Inc., Mario Patino, 285 NW. 27th Ave. #18, Miami, FL 33125.	FRF. 9256 SW. 40th St., Miami, FL 33165. 2900 W. 12th Ave., Hialeah, FL 33012.
Varadero International Corp., Daisy Diaz, 3310 SW. 82 Avenue, Miami, FL 33155.	TSP, FRF. 2742 SW. 8th St., Miami, FL 33135
Viajes Antillas, Carlos Garcia, Calle Arzuaga #201, Rio Piedras PR 00928.	TSP.
Viajes Comunidad International Service, Vicente Rodriguez, 4800 W. Flagler St. #210, Miami, FL 33134.	TSP, FRF.
Viajes Con Aldas, Carlos Ernestro Aldas, 2425 E. Siauson Avenue Suite 117, Hunting Park, CA 90255.	FRF.
Viajes Varadero, Inc., Raul Alzaga Manresa, Ave Americo Miranda 1136, Caparra Terrace, Rio Piedras, PR 00921.	TSP, FRF.
Wilson International Services, Inc., Daniel Blanco (Old Address), 239 NW. 59 Avenue, Miami, FL 33126. (New Address), 1250 NW. 7th St. #105, Miami, FL 33125.	TSP, FRF. (Current Branch) 7300 Kennedy Blvd., North Bergen, NJ 07047.

Dated: April 11, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 14, 1989.

Salvatore R. Martoche.

Assistant Secretary (Enforcement).

[FR Doc. 89-9711 Filed 4-19-89; 11:16 am]

BILLING CODE 4810-25-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee; Results of Reviews of Petitions Requesting Changes in the List of Countries and Articles Eligible for Duty-Free Treatment Under the 1988 Annual Review of the GSP

This publication contains the dispositions of the petitions accepted for review in the 1988 annual review of the GSP program (53 FR 27335 and 53 FR 33097). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The review was conducted pursuant to regulations codified as 15 CFR Part 2007. These changes will take effect on July 1, 1989. The President's decisions concerning the 1988 annual review have also been reflected in a proclamation and in a recent USTR press release. (The press release is available by contacting the USTR Public Affairs Office at (202) 395–3230.) All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Room 517, 600 17th Street, NW., Washington, DC 20506.

Petitions were also submitted requesting a review of the beneficiary status of six GSP beneficiary countries based on their practices in the area of internationally recognized worker rights. One petition on the Central African Republic was continued from the 1987 Annual Review. After reviewing those requests the President determined that Israel and Malaysia are taking steps to afford internationally recognized worker rights. The President also determined that Burma and the Central African Republic are not taking such steps and therefore will be suspended from the GSP program. Haiti, Liberia, and Syria will continue to be reviewed as part of the upcoming 1989 Annual Review. With respect to a request from Occidental Petroleum to examine Venezuela's actions of alleged expropriation without compensation, the President has extended the review for up to one year.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

Case # HTS	Article	Petitioner	Action Taken
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.			
88-HS-3 2097.11.00	Phenol	Government of Mexico	Petition Granted.
88-HS-4 2917.19.15	Fumaric Acid	Government of Mexico	Petition Granted.

Case # HTS	Article	Petitioner	Action Taken
88-HS-5 2917.19.23	Maleic Acid	Government of Mexico	Petition Granted.
88-HS-6 2918.19.60	Malic Acid	Government of Mexico	Petition Granted.
88-HS-7 3817.10.00	Mixed Alkylbenzenes	Shrieve Chemical Products, Inc.	Petition Granted.
88-HS-8 7019.10.40	Glass Rovings	PPG Industries	Petition Granted.
88-HS-9 9607.20.00	Parts of slide fasteners	Government of Colombia	Petition Granted.
88-HS-10 9607.20.40	Slides	Government of Colombia	Petition Granted.
88-HS-11 9607.20.80	Parts, nesi	Government of Colombia	Petition Granted.
B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.			
88-HS-12 2804.69.10	Silicon Metal	The Ferroalloys Association	Petition Denied.
88-HS-13 2916.39.15	Ibuprofen	Ethyl Corporation	Petition Denied.
88-HS-15 7307.93.30	Steel pipe fittings	US Butt-weld Fitting Committee	Petition Granted.
88-HS-16 9025.11.20	Clinical Thermometers	Florida Medical Industries	Petition Denied.
C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles under the Generalized System of Preferences.			
88-HS-14 2933.90.47	Hexamine	Wright Chemical Corporation	Graduate Mexico.
D. Petitions to waive competitive need limits for a country [1] for a product on the list of eligible articles for the Generalized System of Preferences.			
88-HS-17 9503.50 (Mexico)	Toy balloons	American Imports	Petition Denied.
88-HS-18 9503.90.60 (Mexico)	Toys, no spring	Mattel, Inc., Kenner Parker Toys, Inc.	Petition Denied.
88-HS-19 9503.90.70 (Mexico)	Toys, nesi	Mattel, Inc., Kenner Parker Toys, Inc.	Petition Granted.

[1] Countries subject to petition are identified under HTS number.

[FR Doc. 89-9578 Filed 4-20-89; 8:45 am]
BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 76
Friday, April 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 21, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters.

CONTRACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–9717 Filed 4–19–89; 10:41 am]

BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 18, 1989.

TIME AND DATE: 10:00 a.m., Thursday, April 27, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Otis Elevator Company*, Docket Nos. PENN 87–25–R, etc. and PENN 86–262. (Issues include whether Otis Elevator is an independent contractor under the Mine Act and thus liable for violations of several mandatory safety standards.)

Any person intending to attend this argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following Oral Argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Otis Elevator Co.*, Docket No. PENN 87–25–R, etc. (See ORAL Argument listing)
2. *Pennsylvania Electric Company*, Docket No. PENN 88–227. (Issues include consideration of procedural motions.)

It was determined by a unanimous vote of Commissioners that this portion be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–9744 Filed 4–19–89; 1:13 pm]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 18, 1989.

Change in Previously Scheduled Meeting

TIME AND DATE: The meeting previously scheduled for Wednesday, April 19, 1989 has been changed to Wednesday, April 26, 1989 at 10:00 a.m.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Part Open & Part Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. In open meeting: *Secretary of Labor on behalf of Jerry Dale Aleshire, et al. v. Westmoreland Coal Co.*, Docket No. WEVA 84–344–D. (Issues include whether the judge erred in finding that the operator did not discriminate against the complainant miners under Section 105(c) of the Mine Act. 30 U.S.C. 815(c)(1).
2. In closed meeting: *BethEnergy Mines, Inc.*, Docket No. PENN 87–94, etc. (Issues include whether BethEnergy violated 30 CFR 75.1704.)

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

It was determined by a unanimous vote of Commissioners that BethEnergy be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–9745 Filed 4–19–89; 1:13 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, April 26, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the Board's compensation program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–9724 Filed 4–19–89; 11:13 am]

BILLING CODE 6210–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, May 2, 1989, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC, in the Benjamin Franklin Room. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, May 1, 1989, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

May 2, 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, April 3–4, 1989.

2. Remarks of the Postmaster General.
3. Quarterly Report on National Service Performance. (Ann McK. Robinson, Consumer Advocate)
4. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
5. Report of the Chief Postal Inspector and Semiannual Consumer Protection Report. (Charles R. Clauson, Chief Postal Inspector)
6. Advanced Bar Code Concept. (Peter A. Jacobson, Assistant Postmaster General, Engineering and Technical Support Department)
7. Training and Development Mission. (Elwood A. Mosley, Assistant Postmaster General, Training and Development Department.)
8. Capital Investments:
   a. Manhattan, New York, GMF. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   b. San Diego Site Acquisition. (Mr. Smith)
   c. Truck Tractors. (Arthur I. Porwick, Assistant Postmaster General, Operations Systems and Performance Department)
9. Tentative Agenda for June 5–6, 1989, meeting in Philadelphia, Pennsylvania.

David F. Harris,

Secretary.

[FR Doc. 89-9783 Filed 4-19-89; 2:18 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 54, No. 76
Friday, April 21, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1745 and 1749

General Policies, Types of Loans, Loan Requirements - Telephone Program; Preloan Procedures and Requirements - Telephone Program

Correction

In rule document 89-7459 beginning on page 13345 in the issue of Monday, April 3, 1989, make the following corrections:

On page 13349, in the third column, in the second complete paragraph, in the second line, insert "that" between "section" and "RTB".

On page 13350, in the third column, in the last paragraph, in the sixth line, "establishing" should read "established".

§ 1745.2 [Corrected]

On page 13351, in the third column, in § 1745.2(g), in the seventh line, "geRE" should read "RE".

§ 1745.32 [Corrected]

On page 13354, in the first column, in § 1745.32(b), in the first line, "New worth" should read "Net worth".

On the same page, in the second column, in § 1745.32(i)(3), in the eighth line, "icorrective" should read "corrective".

§ 1749.32 [Corrected]

On page 13358, in the 1st column, in § 1749.32(b), in the 10th line, "position" should read "postloan".

§ 1749.42 [Corrected]

On page 13360, in the first column, in § 1749.42(a)(3), in the second line, "will" should read "until".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-802]

Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof From Japan

Correction

In notice document 89-3203 beginning on page 6433 in the issue of Friday, February 10, 1989, make the following correction:

On page 6434, in the 3rd column, in the 3rd complete paragraph, in the 12th line, "include" should read "exclude".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit on Certain Cotton Textile Products Produced or Manufactured in India

Correction

In notice document 89-7457 appearing on page 13100 in the issue of Thursday, March 30, 1989, make the following correction:

On page 13100, in the third column, in footnote 3, in the first line, "only HTS numbers" should read "all HTS numbers except".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[Federal Acquisition Circular 84-45]

Federal Acquisition Regulation (FAR); Prompt Pay and Definition of A-E Services

Correction

In rule document 89-7614 beginning on page 13332 in the issue of Friday, March 31, 1989, make the following correction:

§ 52.232-27 [Corrected]

On page 13341, in § 52.232-27, in the clause, in the second column, in paragraph (c)(2), in the third line, "more" should read "made".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temp. Reg. A-33]

Federal and State Tax Tables To Be Used for Calculating 1989 Relocation Income Tax (RIT) Allowance Payments

Correction

In rule document 89-7119 beginning on page 12448 in the issue of Monday, March 27, 1989, make the following corrections:

1. In **Attachment B**, on page 12449, in the table, in the first table-column, in entry 50, in the first line, the corresponding entry in the third table-column should read "6.93".

2. In **Attachment C**, on page 12450, in the italic heading, "*Tax Year 1988*" should read "*Tax Year 1989*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-12; A-22435]

Arizona; Opening Order

Correction

In notice document 89-8269 beginning on page 14169 in the issue of Friday, April 7, 1989, make the following correction:

On page 14170, in the first column, under "T. 13 S. R. 32 E.,", the first line should read "Sec. 4, NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Bureau of Personnel

22 CFR Part 192

[Final Rule 108.884]

Victims of Terrorism Compensation

Correction

In rule document 89-7282 beginning on page 12596 in the issue of Tuesday, March 28, 1989, make the following correction:

§ 192.52 [Corrected]

On page 12603, in the 2nd column, in § 192.52(c)(3), in the 11th line, "6⅔" should read "66⅔".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Custom Service

19 CFR Part 171

Proposed Customs Regulations Amendments Concerning Seizure of Property for Possession of Controlled Substances

Correction

In proposed rule document 89-8296 beginning on page 14242 in the issue of Monday, April 10, 1989, make the following corrections:

§ 171.12 [Corrected]

1. On page 14244, in the second column, in § 171.12(b), in the fourth line, "§ 171.32(d)" should read "§ 171.52(d)".

2. On the same page, in the third column, in amendatory instruction 4., the third line should read "Subpart F consisting of § § 171.51 through 171.55".

§ 171.51 [Corrected]

3. On page 14245, in the 1st column in § 171.51(b)(5), in the 19th line, "day" should read "may".

4. On the same page, in the same column, in § 171.51(b)(6), in the third line from the bottom of the page, "substances" should read "substance".

5. On the same page, in the third column, in § 171.51(b)(6)(ii)(F), in the last line "describe" should read "distribute".

BILLING CODE 1505-01-D

Federal Register

Friday
April 21, 1989

Part II

Department of Transportation

Coast Guard

46 CFR Parts 30, 31, 33, et al.
Lifesaving Equipment; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31, 33, 35, 70, 71, 75, 78, 90, 91, 94, 97, 107, 108, 109, 112, 154, 160, 161, 167, 168, 188, 189, 192, 196, and 199

[CGD 84-069]

RIN 2115-AB72

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a complete revision of the lifesaving equipment regulations for tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, passenger vessels, nautical school ships, offshore supply vessels, and oceanographic research vessels. The primary purpose of the project is to implement the provisions of the new Chapter III of the Safety of Life at Sea Convention 1974, as amended in 1983, which came into force July 1, 1986. The proposed rules would also implement a number of recommendations arising from major vessel casualties. Lifesaving regulations for Great Lakes vessels and certain vessels in domestic trade which are not covered by the Safety of Life at Sea Convention would also be revised to require more effective lifesaving equipment. The proposed rules also reorganize the lifesaving regulations in order to simplify, clarify and reduce redundancy. A number of specification regulations for Coast Guard approved equipment will also have to be revised to meet the new Safety of Life at Sea Convention requirements. Those revisions will be proposed under additional notices at a later date.

DATE: Comments must be submitted on or before August 21, 1989.

ADDRESSES: 1. Comments should be mailed to the Commandant (G-LRA-2/21) (CGD 84-069), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-LRA-2/21) Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC, (202) 267-1477.

2. The revised Chapter III of the Safety of Life at Sea Convention is published by the International Maritime Organization (IMO) in Volume I of the "1983 Amendments to the International Convention for the Safety of Life at Sea, 1974" (SOLAS 74/83) (IMO publication 096 83.10.E). IMO also publishes the "Recommendation on Testing of Life-saving Appliances" and the "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements" in a document titled "Testing and Evaluation of Life-saving Appliances" (IMO publication 982 85.02.E). These publications, and other IMO documents referred to in this notice, are available from:

a. The International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England. The price of publication 096 83.10.E is £2.50 or the dollar equivalent at current exchange rates. Publication 982 85.02.E is £4.00. If payment is by check, it must be drawn on a United Kingdom bank. The price includes surface mail delivery. Airmail delivery is available at extra cost.

b. New York Nautical Instrument Co., 140 West Broadway, New York, NY 10013, (212) 962-4522.

c. Southwest Instrument Co., 235 W. Seventh St., San Pedro, CA 90731, (213) 519-7800.

d. Marine Education Textbooks, 124 North Van Ave., Houma, LA 70360-3866, (504) 879-3866.

e. Baker-Lyman & Co., 308 Magazine St., New Orleans, LA 70130, (504) 522-0745.

3. This notice refers to two technical reports. These reports have been placed in the docket for examination and copying. A limited number of single copies is available free of charge from Office of Marine Safety, Security, and Environmental Protection, Survival Systems Branch (G-MVI-3), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001. The reports may also be purchased from the National Technical Information Service, Springfield, VA 22161, (703) 487-4650. The reports are:

a. "Shipboard Training and Maintenance for Merchant Vessel Survival Equipment", October 1979, Report No. CG-M-1-80, NTIS Accession number ADA100528.

b. "Transitory Fire Resistance of Tanker Lifeboats", February 1980, Report No. CG-D-19-80, NTIS Accession number ADA084257.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Marine Safety, Security, and Environmental Protection (G-MVI-3), Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On June 17, 1983, the IMO Maritime Safety Committee approved SOLAS 74/83, including a new Chapter III (Lifesaving Appliances and Arrangements). Under the SOLAS "tacit amendment" procedure, SOLAS 74/83 was deemed to be accepted on January 1, 1986. There were no objections from any contracting government. Therefore, the new requirements came into force on July 1, 1986 for the United States and all other contracting governments. Ships whose keels were laid or which are at a similar stage of construction on or after that date must comply in order to qualify for a SOLAS Safety Certificate. In addition, some of the operational requirements apply to existing ships on that date, and some equipment requirements will become effective for existing ships on July 1, 1991. SOLAS 74/83 applies to self-propelled merchant vessels on international voyages, except for (1) Cargo ships (including tankers) under 500 tons gross tonnage and (2) Fishing vessels.

The Coast Guard announced a series of meetings with the U.S. Lifesaving Manufacturers Association in the **Federal Register** of July 30, 1984 (CGD 84-051, 49 FR 30339). The implications of the SOLAS 74/83 Chapter III requirements on Coast Guard approved lifeboats, inflatable liferafts, and their launching equipment were discussed. Guidelines for lifesaving equipment manufacturers were also developed covering the additions and deviations from present regulations that are necessary to meet the new SOLAS 74/83 Chapter III. The rules proposed in this notice reflect some of the discussions held at those meetings.

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on this project on December 31, 1984 (49 FR 50745). That notice described the major changes under consideration, and invited comments on the proposals. Twenty-two parties offered a total of 106 separate comments. Those submitting comments included nine vessel operators, five industry associations, three drilling companies, two equipment manufacturers, one union, one shipbuilder, and one interested individual. Two of the comments generally supported the regulations, while none opposed the concept in general. The remainder of the comments either supported or opposed particular parts of the ANPRM, or suggested changes. These comments are covered in the appropriate sections of the following discussion on the rules proposed in this notice.

The Coast Guard also published an Advance Notice of Proposed Rulemaking (ANPRM) on Offshore Supply Vessel Regulations on February 14, 1983 (48 FR 6636, Coast Guard docket CGD 82–004). That notice proposed a new Subchapter L on offshore supply vessels that included lifesaving equipment requirements. This notice supercedes the lifesaving equipment proposals under CGD 82–004. A notice of proposed rulemaking (NPRM) on offshore supply vessels will be published later that will reference the regulations proposed in this notice for lifesaving equipment requirements. The inspection and operational requirements for lifesaving equipment on new offshore supply vessels will be addressed in the NPRM under CGD 82–004, taking into consideration the characteristics, methods of operation, and the nature of their service (see 46 U.S.C. 3306(f)).

The rules proposed in this notice do not cover small passenger vessels inspected under 46 CFR Subchapter T. Proposed lifesaving equipment regulations for small passenger vessels were published on January 30, 1989 (54 FR 4412) as part of a comprehensive project to revise Subchapter T (CGD 85–080, RIN 2115–AC22).

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this Notice (CGD 84–069) and the specific section to which each comment applies, and give reasons for the comments. If an acknowledgment is desired, a stamped, self-addressed post card should be enclosed. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if requested in writing and it is determined that the opportunity to make oral presentations will benefit the rulemaking process.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting these regulations are Mr. Robert Markle, Project Manager, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of the Chief Counsel.

General Discussion of the Proposed Regulations

This notice proposes a complete revision of the vessel lifesaving equipment carriage regulations in CFR Title 46 for tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, passenger vessels, nautical school ships, offshore supply vessels, and oceanographic research vessels. The proposal consolidates the regulations into new Subchapter W of Title 46 which would replace most of the repetitive sections of the lifesaving equipment parts of the present vessel regulations, which would be deleted.

Specification regulations for Coast Guard approval of various items of lifesaving equipment, such as lifeboats, liferafts, lifejackets, flares, and others, also need to be revised to meet the new SOLAS 74/83 requirements. These revisions will be proposed in separate notices.

Some of the requirements of the SOLAS 74/83 Chapter III will require a number of changes to 46 CFR 113.30 on sound-powered telephone systems, 46 CFR 113.50 on emergency loudspeaker systems, and 46 CFR 113.65 on whistle operators. These revisions will be covered in a separate notice of proposed rulemaking on changes to Subchapter J of Title 46, "Electrical Engineering", to be published at a later date.

Although the proposed regulations are completely revised in format, their content is similar to the present regulations with the exceptions covered in the following discussions.

a. The proposed vessel regulations incorporate the changes required by SOLAS 74/83, Chapter III. Although the new Chapter III is much closer to U.S. regulations than the previous version, the U.S. regulations still describe more completely the onboard inspection requirements for approved lifesaving equipment. These existing provisions, which SOLAS 74/83 Chapter III does not cover, are generally retained. Persons who want to review the revised Chapter III should obtain Volume I of the "1983 Amendments to the International Convention for the Safety of Life at Sea, 1974" (see **ADDRESSES** section).

(1) Three of the comments on the ANPRM were to the effect that the U.S. regulations for vessels subject to SOLAS 74/83 should follow the SOLAS 74/83 requirements as closely as possible and should not include unilateral requirements that exceed the SOLAS 74/83 regulations. We agree with these comments as a general principle. The regulations proposed in this notice do exceed SOLAS 74/83 requirements in a number of areas however, because the SOLAS 74/83 requirements are vague or do not address certain important safety problems. Proposed requirements that exceed SOLAS 74/83 regulations and that are not covered in present regulations are covered in the discussions that follow, along with the reasons why the regulation is being proposed. A derivation table is also included at the end of this preamble that shows the relationship of the regulations in this notice to existing regulations and to SOLAS 74/83. Comments are specifically requested on proposals which exceed or are not addressed in SOLAS 74/83. Most of these proposals are fully discussed in following sections of this notice, but the following is a summary of regulations proposed in this notice that would affect SOLAS vessels, but which are not covered in SOLAS 74/83:

Sections 199.15(f) and 199.135(c) would require each vessel equipped with a liferaft not served by a launching appliance, and each vessel equipped with an inflatable buoyant apparatus, to have rail or bulwark openings, or appropriate mounting arrangements.

Section 199.15(g) would require retrofitting of gravity davits.

Section 199.15(h) would require retrofitting of totally enclosed lifeboats.

Sections 199.15(i) and 199.310(b) would prohibit the use of new aluminum lifeboats on tank ships certificated to carry crude, product, chemicals, or liquified gases; having a flashpoint less than 60°C.

Section 199.15(l) would require all lifeboats to meet the propulsion power requirements in effect for all new Coast Guard approved lifeboats since 1965 (see 46 CFR 160.035–3(a)).

Section 199.25 explains the conditions under which the Officer in Charge, Marine Inspection (OCMI) may require specialized or additional lifesaving equipment.

Section 199.64 contains requirements for satellite Emergency Position Indicating Radio Beacons (EPIRBs) and Search and Rescue Radar Transponders (SARTs). These requirements are not in SOLAS 74/83, but are in a new set of SOLAS Amendments adopted in 1988 which completely revise the requirements for ship radiocommunications.

Section 199.110(d) would limit the amount of climbing necessary to reach the survival craft from the deck of the vessel.

Section 199.153(h) would require appropriate guards or other protection for falls subject to damage or fouling.

Section 199.153(j) clarifies the lowering speed for a lightly loaded survival craft. SOLAS 74/83 is not clear on this point, and could be interpreted as imposing a more stringent requirement.

Section 199.170(d) covers the need for the auxiliary line needed for use with a line throwing appliance.

Section 199.170(e) covers stowage of line throwing appliances.

Section 199.175(c)(24) would require two lifejackets to be carried in each lifeboat.

Section 199.175(c)(35) would require lifeboats to have a rainwater collection device.

Section 199.217(b) would require formation of an emergency squad on certain passenger vessels.

Section 199.272 would require each vessel with an inflatable liferaft stowed in a remote location to have enough lifejackets to equal the capacity of the liferaft stowed at the liferaft station.

Sections 199.273 and 199.640 would require immersion suits on all cargo ships and mobile offshore drilling units (MODUs) in colder waters, while SOLAS requires them only on vessels not equipped with totally enclosed lifeboats.

Section 199.650 contains several requirements for MODUs which have no counterpart in SOLAS 74/83, but do conform with a new version of the IMO MODU Code, now under consideration by IMO. The MODU Code interprets SOLAS for MODUs, which are a very specialized type of vessel.

(2) Two comments recommended that the regulations include the possibility for exemption from SOLAS 74/83 requirements that would not be appropriate for certain voyages, such as the exemption provisions under regulation 2 of SOLAS 74/83. We agree with these comments, but no new regulation is needed since these exemptions are provided for in existing 46 CFR 30.01–6, 70.05–10, and 90.05–10.

b. As part of the consolidation of the regulations, revised requirements for vessels not subject to SOLAS 74/83 are proposed in this notice. Wherever appropriate, proposed revisions for the vessels not subject to SOLAS 74/83 are consistent with the SOLAS requirements. Vessels not subject to SOLAS 74/83 are primarily nonself-propelled vessels, Great Lakes vessels, coastwise vessels, cargo and tank vessels under 500 tons gross tonnage, and other vessels not on international voyages. Mobile offshore drilling units (MODUs) are also covered in this notice. Self-propelled MODUs are technically covered by SOLAS 74/83 when working in waters of a nation other than the nation where they are registered. The IMO has developed the Code for the Construction and Equipment of Mobile Offshore Drilling Units (MODU Code) to provide a level of safety equivalent to conventional vessels under SOLAS 74/83. U.S. MODUs are not required to meet the MODU Code, but if they operate in waters of another country, that country may require a MODU Code Certificate as a condition for their operation in those waters. Self-propelled MODUs on international voyages are ships under SOLAS 74/83, but most countries will accept MODU Code Certificates as an equivalence to SOLAS. For these reasons, the Coast Guard will issue a MODU Code Certificate to a MODU that meets the Code, if the operator requests it. The present MODU Code and a revision of the MODU Code presently under consideration by the members of IMO, are used as a basis for some of the revisions proposed in this notice. These are more completely discussed in a following section titled "Additional Requirements for Mobile Offshore Drilling Units."

(1) Two comments opposed the inclusion of MODUs into Subchapter W because the present Subchapter I–A of Title 46 on MODUs was intended to be a set of uniform, comprehensive regulations for MODUs, recognizing the significant difference between MODUs and other types of vessels. One of the comments added the suggestion that MODU revisions should be proposed separately, and should take into account the various types of MODUs. When Subchapter I–A was developed, it was intended to be a single comprehensive set of regulations for MODUs, like Subchapter D for tank vessels, Subchapter H for passenger vessels, and Subchapter I for cargo and miscellaneous vessels. This type of regulatory organization leads to extensive repetition since much of the general lifesaving requirements are the same for all vessels. Subchapter W can accommodate the special requirements for MODUs as well as for other vessels. A consolidation of regulations by subject matter, rather than by vessel type, has already been utilized in Subchapter F on Marine Engineering, Subchapter J on Electrical Engineering, and Subchapter S on Stability. Consequently, this proposed notice includes MODUs under Subchapter W.

(2) The same two comments expressed concern over the application of SOLAS 74/83 and the MODU Code to MODUs. One stated that the ANPRM implied that SOLAS 74/83 changes would automatically be applied to MODUs, and pointed out that the MODU Code recognized the differences by establishing a level of safety equivalent to SOLAS. The comment noted that the U.S. is not bound to comply with the MODU Code since it, unlike SOLAS 74/83, is not a convention. The other comment supported making regulations for self-propelled MODUs consistent with the MODU Code, and did not want MODUs to be forced into complying with SOLAS 74/83 or required to meet requirements more onerous than the MODU Code. The requirements of SOLAS 74/83 that would apply to MODUs under the regulations proposed in this notice are general in nature and should apply to any vessel with lifesaving equipment. These regulations are in Part B of proposed Subchapter W. Regulations proposed in this notice that go beyond the requirements of SOLAS 74/83 and the MODU Code are completely discussed in the following section on "Additional Requirements for Mobile Offshore Drilling Units."

(3) One comment noted that the International Association of Drilling Contractors would sponsor a Second International Conference on Offshore Safety in March 1986, and suggested that a new regulatory scheme should not be put in place before the conference is concluded. The transactions of that conference were available and were reviewed in drafting this NPRM.

(4) Five comments on the ANPRM stated that the SOLAS 74/83 requirements should not be applied to nonself-propelled vessels and other vessels in various domestic services not subject to SOLAS 74/83. The comments expressed concern that this would generate excessive costs and requirements for unnecessary equipment. We agree that many of the SOLAS 74/83 requirements for oceangoing vessels in international trades are not appropriate for inland vessels and vessels trading solely within U.S. coastal waters, but many of the SOLAS 74/83 requirements are basic principles that apply to any vessel carrying lifesaving equipment. These are the SOLAS 74/83 requirements that are proposed as requirements for other vessels in this notice and they are generally not new requirements. Where a certain regulation is applicable only to vessels in certain services, the regulation clearly states the services to which it applies. As an example, see proposed § 199.10(b).

(5) One comment stated that the Coast Guard would be hard-pressed to prove that revised equipment requirements

would have prevented any fatalities on the Great Lakes. The comment pointed to the "impressive safety record of the Great Lakes maritime sector", especially the self-propelled tank vessel sector. Over the past 30 years, there have been four major casualties resulting in abandonment on the Great Lakes, each of which pointed to the need for improvement of the lifesaving equipment carried on these vessels. None of these casualties involved a tank vessel, however, we believe the hazards that would be present in accidents involving Great Lakes tank vessels would be similar to those involving oceangoing tank vessels. Similarly, a sinking of a Great Lakes tank vessel would present survival problems for the crew similar to those that would be experienced in the sinking of a Great Lakes bulk carrier. Each of the major revisions that would result from the regulations proposed in this notice are discussed in the following sections along with the reasons for the changes.

c. Revisions are proposed to incorporate various recommendations of Coast Guard Marine Boards of Investigation and the National Transportation Safety Board. Most of these recommendations are consistent with revisions that are required to comply with SOLAS 74/83 Chapter III. Significant differences are discussed in following sections.

Organization of the Proposed Regulations

The lifesaving equipment requirements are proposed as a new Subchapter W (Part 199) of Title 46 of the Code of Federal Regulations. This new subchapter has been placed first in the proposed revisions contained in this notice, even though it is the last numerically and would appear at the end of Chapter I of Title 46. This is done for the benefit of the reader, since most of the rest of the proposed regulations involve inspection and operational requirements which require an understanding of the equipment requirements in Subchapter W. Subchapter W would completely replace Parts 33, 75, 94, 192, and Subpart E of Part 108 of Title 46.

The structure of Subchapter W parallels Chapter III of SOLAS 74/83. The general requirements applying to all vessels are set out first in Subparts A and B. Subparts C through H contain additional requirements for passenger vessels, cargo vessels, tank vessels, special purpose ships, nautical school ships, and mobile offshore drilling units. For §§ 199.10 to 199.290, the corresponding regulation of SOLAS 74/83 Chapter III is generally the section number following the decimal point, divided by 10. For example, the SOLAS 74/83 Chapter III regulation generally corresponding to § 199.140 is regulation 14 (140 divided by 10). One comment to the ANPRM urged language similar to the SOLAS 74/83 regulations be used in the U.S. regulations in order to avoid future problems with interpretation and possible conflicts. This is the main objective for using this type of organization. The language used differs in some areas because the SOLAS 74/83 regulations are silent on some points, and are sometimes deliberately vague since complete international agreement was not possible on a particular point. Other changes were necessary in order to conform with current regulatory drafting practices.

There are exceptions to the organizational system described in the preceding paragraph. Chapter III of SOLAS 74/83 contains some inspection and operational requirements. These requirements are proposed as changes to the existing sections of the vessel regulations covering inspection and certification (Parts 31, 71, 91, 107, and 189), and operations (Parts 35, 78, 97, 109, 196, and Subpart 167.65). Part C of SOLAS 74/83 Chapter III (Regulations 30 to 53) contains specifications for lifesaving equipment. A few of these requirements are covered in the proposed Subchapter W, but most affect the specification regulations in Subchapter Q of Title 46 of the Code of Federal Regulations. Most of the revisions to Subchapter Q that are required by the new Chapter III will be proposed in separate notices.

One of the objectives of this project is to eliminate repetitive and overlapping regulations. The new Subchapter W accomplishes this by covering all of the lifesaving system equipment requirements for major inspected vessels in one place. While this type of organization should help to eliminate regulations that are inconsistent from one type of vessel to another, it will require the user to look in two places in order to find the regulations applying to a particular vessel. The user will have to refer to the requirements for all vessels as well as the specific requirements for the particular type of vessel. The revisions for inspection and certification, and for operations are proposed as changes to the existing parts of the various vessel type regulations covering these subjects. This means there are a number of very similar changes being proposed to as many as seven different parts of Chapter I of Title 46. Eventually, these regulations may also be consolidated, and this repetition will be eliminated. Consolidation of these sections of the regulations is outside the scope of this regulatory project.

References to SOLAS 74/83

These regulations are based in part on SOLAS 74/83, the 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974, which includes a completely revised Chapter III, "Life-saving Appliances and Arrangements." References to the 1983 Amendments are written as "SOLAS 74/83." References to individual regulations follow the convention used in SOLAS 74/83 of listing the chapter, followed by a slash "/", then the regulation number, and the various numbered subdivisions of the regulation separated by decimal points. "Regulation III/4.2.1" therefore refers to Chapter III, Regulation 4, paragraph 2.1.

Additional Requirements

The proposed Subchapter W is intended to establish lifesaving system requirements for vessel operations in tropical and temperate climates. It does not cover operations under unusually severe conditions, such as Arctic conditions. New developments in the search for mineral resources will regularly take vessels into environments where commercial vessel operations have been limited. Proposed § 199.25 will provide for appropriate lifesaving equipment under the conditions in which these vessels will operate.

New and Revised Terminology

a. The SI (metric) system of measurement is used throughout the regulations proposed in this notice. This is done to be consistent with the measurements used in the new Chapter III of SOLAS 74/83 which are in SI units for the first time. It is also consistent with the international character of shipping and shipbuilding. For the convenience of those wishing to use the English system, English equivalents are given in parentheses immediately following the SI units. The SI units would be the official regulatory requirement.

b. The term "immersion suit" replaces "exposure suit" formerly used in Coast Guard vessel regulations. These suits have also been widely known as "survival suits". A separate rulemaking project has updated the specifications for these suits and incorporates the new terminology. These regulations were published on October 22, 1987 at 52 FR 39532.

c. "Thermal protective aids" would be required for certain vessels under the

proposed regulations. These devices are made of lightweight material that will fold into a compact package so that they can be carried as survival craft equipment. They are used to limit heat loss of persons riding in survival craft. The Coast Guard published a new specification regulation for these devices on May 29, 1986 at 51 FR 19342.

d. The term "lifejacket" replaces "life preserver" in order to be consistent with SOLAS 74/83 terminology. This device is also referred to in Coast Guard regulations for recreational boats as a Type I Personal Flotation Device (PFD). The Type I PFD designation will continue to be used in the regulations for recreational boats.

e. The term "lifejacket light" replaces "personal flotation device light" to be consistent with SOLAS 74/83 terminology.

f. The term "hydrostatic release unit" replaces "hydraulic release" and "hydraulic and manual lifesaving equipment release" to be consistent with SOLAS 74/83.

g. The term "mechanical disengaging apparatus" replaces "release mechanism" to be consistent with SOLAS 74/83.

h. The term "survival craft" is defined in proposed § 199.30. The term includes lifeboats, liferafts, buoyant apparatus, and life floats, but does not include rescue boats.

Equivalent and Novel Lifesaving Appliances and Arrangements

Proposed § 199.40(b) provides for approval of "novel" lifesaving appliances. Criteria for acceptance and approval of these devices are in IMO Resolution A.520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements". Regulation I/5 of SOLAS 74/83 allows national Administrations to accept arrangements that are equivalent to those specified in the convention. Resolution A.520 establishes performance criteria for these equivalent systems for the first time.

Rescue Boats

One or more rescue boats would be required on most vessels under these proposed regulations. These boats are intended primarily to rescue persons who fall overboard. They could also be used to assist another vessel in trouble. Rescue boats would replace the emergency lifeboats now required on certain passenger vessels. Present regulations require rescue boats on those vessels where inflatable liferafts are substituted for lifeboats. As in present regulations, vessels operating in relatively protected waters would continue to use the simple rescue boat approved under existing 46 CFR 160.056. Present regulations also require that vessels in exposed waters carry a more seaworthy rescue boat, but the regulations give no criteria for these boats. Under SOLAS 74/83 and the proposed regulations, these rescue boats would have to meet Regulation III/47 of SOLAS 74/83. The need for rescue boats or improved means of retrieving survivors from rough seas was identified by the National Transportation Safety Board in its investigations of the SS BADGER STATE and SS PANOCEANIC FAITH casualties. A lifeboat could also be used as a rescue boat if it meets both the rescue boat and lifeboat requirements. One comment stated that a rescue boat had to be arranged to allow no more than two persons of average build and strength to assist the person into the rescue boat, and that a lifeboat could not meet this requirement. A specification regulation for rescue boats will be proposed under another notice and it will contain performance requirements for rescue boats. If a manufacturer can design a lifeboat so that it meets the performance requirements for both a lifeboat and rescue boat, it could be approved as both.

a. Proposed § 199.140 covers the stowage requirements for rescue boats, including a requirement that rescue boats be stowed ready for launching in not more than 5 minutes. One comment stated that rescue boats have some time to prepare before launching, and that the same speed and efficiency is not required as when abandoning ship. We do not agree with this comment. One of the primary functions of the rescue boat is to rescue persons that fall overboard. The time required to launch the rescue boat is of the utmost importance. This is the reason for the 5 minute requirement for preparation of the boat for launching, and for the requirement in proposed § 199.160 that the boat be capable of being launched in the shortest possible time.

b. Proposed § 199.160 covers general requirements for rescue boat embarkation, launching, and recovery arrangements. This paragraph is based on Regulation III/16 of SOLAS 74/83.

c. Many of the rescue boats used on U.S. vessels not on international voyages are small and lightweight, can be put into the water easily by several crew members, and can be boarded in the water from the deck of the vessel. These rescue boats could be exempted from the requirement for a launching appliance on the same basis as survival craft under proposed § 199.150(a)(1).

d. Proposed § 199.202(d) would require rescue boats meeting 46 CFR 160.056 used on passenger vessels to be motor-propelled. Although rescue boats approved under 46 CFR 160.056 are basically rowboats, they can usually be equipped with an outboard motor. This proposal is in response to a recommendation by the National Transportation Safety Board (NTSB) arising from an investigation of the collision between the passenger vessel MISSISSIPPI QUEEN and the towboat CRIMSON GLORY in the Mississippi River in 1985 (NTSB recommendation 86–075). Although the rescue boat was not used in this casualty, the board noted that current, visibility, and traffic problems in the river would limit the usefulness of an oar-propelled boat, and that a motorized rescue boat would greatly reduce the time needed to retrieve a victim in the river.

e. One of the purposes of a rescue boat on a passenger vessel in ocean, short international voyage, and coastwise service, is to marshal the liferafts which have no means of propulsion other than their paddles. Proposed § 199.203 would establish acceptable liferaft-to-rescue boat ratios. (Lifeboats could also be used for this purpose, even if not approved as rescue boats.) This proposed regulation is based on Regulation III/20.3 of SOLAS 74/83. One of the comments on the ANPRM stated that there should be a generous assignment of personnel to the rescue boat to allow for several shifts of persons to operate the boat and act as towline tenders. Assignment of personnel to the rescue boat in the event of a casualty is the responsibility of the master. The boat will be large enough to accommodate at least six persons so there should be room for enough personnel for alternating shifts.

f. Proposed § 199.262 (e) and (f) provide for exemptions from the requirement to carry rescue boats for certain cargo vessels not in ocean service, and for nonself-propelled vessels. Proposed § 199.410 provides for exemptions from the requirement to carry rescue boats for special purpose ships operating on the continental shelf of the United States. A similar provision was included in the February 14, 1983 ANPRM on offshore supply vessel regulations. One comment on the December 31, 1984 ANPRM on this project pointed out that during the development of the new Chapter III of SOLAS 74/83, the United States had submitted a proposal to IMO to exempt small cargo vessels from the rescue boat requirement, if the vessel itself provided a satisfactory rescue platform. The

comment stated that although the proposal was not accepted by IMO, the concept was still valid, especially for crew boats servicing the offshore drilling industry. As special purpose ships, the proposed regulations would exempt suitably arranged crew boats from the rescue boat requirement if they operate on the continental shelf of the United States, or if they carry less than 50 offshore workers and are not in ocean service. Offshore supply vessels that are not crew boats, as well as oceanographic research vessels would qualify for the same rescue boat exemptions since they are also classified as special purpose ships under proposed § 199.400. On December 24, 1987, the Coast Guard published an NPRM on an Emergency Evacuation Plan for Manned OCS Facilities (52 FR 48717). An offshore supply vessel designated as a "standby vessel" in such an emergency evacuation plan might include a rescue boat as part of the emergency evacuation plan. This rescue boat could be the same one used to meet the rescue boat requirements proposed in this notice.

Prevention and Reduction of Hypothermia

Many of the new requirements proposed in this notice are intended to prevent or reduce the effects of hypothermia.

a. In accordance with Regulation III/7.3 of SOLAS 74/83, proposed § 199.73 would require vessels to carry immersion suits for each member of the rescue boat crew. As proposed, this requirement would apply not only to SOLAS 74/83 vessels, but also to those vessels operating in coastwise and Great Lakes service. One comment on the ANPRM wanted this immersion suit requirement limited to vessels operating in those areas where immersion suits are required to be carried, apparently referring to the warm water exemptions further discussed in item (e.) under this heading. The proposed regulation does not include such an exemption since it is not provided for under regulation III/7.3 of SOLAS 74/83. Comments are specifically requested as to whether or not the final regulations should include a limited warm water exemption for this requirement for certain vessels not required to meet SOLAS 74/83.

b. Thermal protective aids would be required to be carried as an item of lifeboat, liferaft, and rescue boat equipment on vessels in ocean, short international voyage, and coastwise service. These aids are compact, waterproof devices that are intended to retain the body heat of the wearer riding in a boat or liferaft. They are not intended to be effective devices for a wearer in the water. This proposed requirement is consistent with Regulations III/38.5.24, III/41.8.31 and III/47.2.2.13 of SOLAS 74/83 and appears in the equipment list in § 199.175(c)(48) and as item 48 on Table 199.175(c).

c. Proposed § 199.214 would require each passenger vessel in ocean, short international voyage, coastwise, and Great Lakes service to carry immersion suits for the crew of each survival craft on the vessel. Thermal protective aids would be required for the rest of the persons on board. For Great Lakes passenger vessels, this requirement would replace 46 CFR 75.41, which requires immersion suits for all persons on board during the Winter season.

(1) One comment stated that thermal protective aids should be carried on cargo vessels as well as passenger vessels. This is not necessary since cargo vessels are covered by a requirement for immersion suits in proposed § 199.273.

(2) The same comment also suggested that there should be more than one thermal protective aid on board for each person in order to provide spares for those that might be lost or damaged. The thermal protective aids carried as lifeboat and liferaft equipment under § 199.175(c)(48) would be in addition to those carried under § 199.214, therefore spares would be available on board.

(3) Finally, the comment noted that the ANPRM would have exempted passenger vessels that carry totally enclosed or partially enclosed lifeboats from the requirement to carry thermal protective aids. The comment went on to suggest that only vessels with totally enclosed lifeboats should be exempted. Proposed § 199.214 contains no exemptions related to totally enclosed or partially enclosed lifeboats. On February 6, 1984, the Coast Guard published final rules requiring the carriage of exposure suits on certain cargo vessels. These rules provided an exemption for vessels with totally enclosed lifeboats. On November 8, 1984, the President signed into law an act (Pub. L. 98-623) which included a specific legislated requirement for the carriage of exposure suits and a prohibition on excluding a vessel only because that vessel carries other lifesaving equipment (such as totally enclosed lifeboats). On December 31, 1984, the Coast Guard published an amended final rule removing the exemption for vessels with totally enclosed lifeboats (49 FR 50724). Although Pub. L. 98-623 did not address thermal protective aids on passenger vessels, the purpose of these aids is to provide a degree of hypothermia protection, as is the purpose of exposure suits on cargo vessels. The same principles should therefore apply, so these proposed rules contain no exemption from the thermal protective aid requirement based on the carriage of either totally enclosed or partially enclosed lifeboats.

d. Immersion suits would be required for cargo vessels under proposed § 199.273, and for MODUs under proposed § 199.640. These proposed regulations are essentially identical to the present regulations requiring exposure suits. Three comments wanted these suits to be able to be used to satisfy the requirement for rescue boat crew immersion suits in § 199.73. This would be permitted under proposed §§ 199.273(d) and 199.640(d).

e. Warm water exemptions from the immersion suit requirements are proposed in § 199.214(d) for passenger vessels, in § 199.273(a) for cargo vessels, and in § 199.640(a) for MODUs. The latitudes for the exemption would be established at 32 °N and 32 °S worldwide. The present regulations establish the exemption lines at 35 °N and 35 °S worldwide, except in the Atlantic Ocean where the lines are 32 °N and 32 °S. These latitudes are established by law (46 U.S.C. 3102(a)). The same Act of Congress that established this statute (Pub. L. 98-623) stated that it "does not limit the authority of the (Coast Guard) to prescribe regulations requiring exposure suits on vessels not required by section 3102 to have exposure suits." This act also required the Coast Guard to report to Congress on the benefits and disadvantages of extending the regulations to require exposure suits on designated vessels operating in all waters north of 31 °N or south of 31 °S. The report to Congress is complete and has been entered in the docket for this project so that it is available for inspection and copying. The report found that there was little advantage to worldwide exemption lines of 31 °N and 31 °S, but it did find that Winter water temperatures in the Pacific Ocean near the west coast of the United States at 32 °N were colder than they were in the Atlantic Ocean at the same latitude. This is the reason that the change to 32 °N and 32 °S exemption lines are proposed. Expected water temperature at 32 °N is at least 60 °F at all times during the year in the coastal areas of North America. If a vessel will operate north of 32 °N or south of 32 °S only when the water temperature is at least 60 °F, the vessel may be exempted from

the exposure suit requirement under existing exemption provisions in 46 CFR 30.01–6 and 90.05–10.

f. The best way to prevent hypothermia is to keep survivors from entering the water. Proposed § 199.150(a) is derived from Regulation III/15.1 of SOLAS 74/83 Chapter III and would require launching appliances for all survival craft, with certain exceptions. Launching appliances enable survivors to board the survival craft aboard the vessel before it is launched, so there is no need to climb down the side of a sinking vessel to board them, or to swim to them. One exception in the proposed regulation would generally apply to liferafts that can be readily put into the water and boarded simply by jumping from the vessel to the survival craft. The other exception applies to the float-free liferafts carried on cargo vessels in ocean and coastwise service. On cargo vessels in Great Lakes service, proposed § 199.150(a) would require the liferafts to be davit launched unless they are boarded from a position on deck less than 4.5 m (14 ft., 9 in.) above the light waterline, and meet one of the other conditions in § 199.150(a)(1)(i) or § 199.150(a)(1)(ii). Section 199.405(d) includes an exemption for launching appliances for liferafts on self-elevating offshore supply vessels known in the industry as "liftboats". Liftboats are used to service offshore platforms, and in an emergency, personnel on board the liftboat can transfer directly to the platform the liftboat is working on. If the emergency is on board the platform, or if the liftboat is not adjacent to a platform, these vessels are capable of dropping quickly to the water for abandonment.

(1) One comment expressed concern that liferafts as small as 15 persons capacity might have to be davit-launched since changing requirements for liferafts might cause them to exceed the 185 kg limit. The comment cited in particular a proposal to require stability appendages on inflatable liferafts which was published in the **Federal Register** on January 11, 1985 (50 FR 558). We believe that the combined effect of the changes needed for inflatable liferafts to comply with SOLAS 74/83 and any required additional stability appendage will result in inflatable liferafts as large as 20 persons capacity being under the 185 kg limit. It should also be noted that under proposed § 199.150(a)(1)(ii), liferafts exceeding 185 kg are not required to be davit launched if they are stowed for direct launching and are less than 4.5 m above the waterline.

(2) One comment stated that davit-launched liferafts on Great Lakes bulk cargo vessels could offer no advantage over float-free liferafts, except in the case of fire. Under proposed § 199.290(b), liferafts on cargo vessels would have to be arranged to automatically float free, whether they are davit-launched or not. On Great Lakes vessels, lifeboats for only 100% of the persons permitted on board would be required. This contrasts with vessels in ocean and coastwise service where 200% capacity in lifeboats is required. If the lifeboats on one side of a vessel in ocean or coastwise service can not be used, there is still 100% capacity available on the other side. The float-free liferafts are used only if the vessel sinks before the lifeboats can be launched. On Great Lakes cargo vessels, the liferafts serve a dual purpose. They must float free if the vessel sinks, and they must be available if the lifeboat (usually only one is carried on newer vessels) can not be used. If they are stowed high above the waterline (over 4.5 m), they must be davit-launched so that they can be boarded by their full complement at deck level, then launched into the water.

g. Proposed § 199.150(h) would require each launching appliance to be actuated from a position within the survival craft, in addition to a position on deck. This is to enable all persons to board the survival craft at the deck, without the need for a deck crew to remain behind. Conventional launching appliances require at least one winch operator on deck, who must climb down a ladder to the survival craft once it has been launched. Transferring from the ladder to the boat in heavy seas can be very difficult, and may result in the deck crew having to enter the water in order to reach the boat. The term "actuated" is used in response to one comment on the ANPRM that "controlled" should not be used since it implied a need to be able to operate the winch brake from inside the survival craft while the survival craft is being lowered. The regulation is intended to permit, but not require the capability to control the winch brake from inside the survival craft while the survival craft is being lowered.

h. The present regulations require open lifeboats on most large commercial vessels, with the exception of MODUs. In heavy seas and cold weather, occupants will get wet and cold in open lifeboats, exposing them to the risk of hypothermia. There is also a danger that the boat can be swamped and made more susceptible to capsize. If the boat capsizes, those that do not drown would be exposed to an even greater risk of hypothermia. Proposed § 199.261 (b) and (e) would require totally enclosed lifeboats on cargo vessels and tank vessels in ocean; coastwise; Great Lakes; and lakes, bays, and sounds service. Totally enclosed lifeboats provide protection from heavy seas. SOLAS 74/83 requires totally enclosed lifeboats to be self-righting when fully loaded and not swamped. If they do swamp, the lifeboats meeting SOLAS 74/83 are required to provide an above-water escape for the occupants. Some lifeboats will be effectively self-righting in the swamped condition. Proposed § 199.201 (b), (c), and (d) would require totally enclosed lifeboats or partially enclosed lifeboats on passenger vessels in ocean, short international voyage, coastwise, and Great Lakes service. Partially enclosed lifeboats have rigid canopies at each end, and an open area in the center that can be quickly closed with a foldable cover. This arrangement provides some of the same hypothermia protection as a totally enclosed boat, but can generally accommodate and provide more rapid boarding for a larger number of persons. Most large passenger vessels use very large lifeboats.

(1) One comment on the ANPRM expressed support for the totally enclosed lifeboat requirements on cargo vessels.

(2) Another comment stated that open lifeboats in combination with immersion suits already carried, provide adequate protection in case of a casualty. The comment also noted that survival craft Emergency Position Indicating Radio Beacons (EPIRBs) would reduce the amount of time survivors have to spend in lifeboats. While the observations made in the comment are valid, the open lifeboat is still susceptible to swamping and capsizing, and can not be made to be self-righting. Furthermore, survival time will be increased by keeping survivors dry, even if they are wearing immersion suits.

(3) A third comment opposed a requirement for totally enclosed lifeboats on Great Lakes cargo vessels, stating no lifeboats had been launched in connection with a U.S. flag vessel loss on the Great Lakes in the past three decades. There have been four major vessel casualties on the Great Lakes in the three decade period mentioned in the comment. The reason lifeboats were not a factor in three of these casualties is that the lifeboats were served by mechanical davits, which would be replaced with gravity davits under this proposal. This issue is more completely covered elsewhere in this discussion. Had boats been launched in these casualties, they would have been

subject to the same hazards discussed previously.

i. Some of the present regulations for passenger vessels do not require survival craft for all persons on board the vessel, even though the vessel may operate in waters cold enough to quickly cause the onset of hypothermia. Table 75.10–20(a) in Title 46 of the Code of Federal Regulations is a complex system of requirements for percentages of persons that must be provided for in lifeboats, liferafts, and life floats on vessels operating in Great Lakes service; lakes, bays, and sounds service; and river service. There are different requirements for a Winter season (Sept. 16 to May 14) and for a Summer season (May 15 to Sept. 15). There are different requirements for vessels operating north of the 33rd parallel and those operating south of the 33rd parallel. Other variations in the requirements are provided for vessels based on routes, radio equipment, daytime operation, etc. The primary considerations in all of these variations are the risk of injury due to cold water and the speed of rescue in case of a casualty. This complex system would be replaced by the regulations proposed in this notice, which are based on the simple principle that survival craft should be provided for all persons on board, and that appropriate additional survival craft should be provided in case some of the survival craft can not be used. The number of survival craft can be reduced below the number necessary to accommodate all persons on board only in those cases where there is minimal risk of death due to hypothermia or its complications.

(1) In place of the complex table of alternatives, the regulations for passenger vessels proposed in this notice give a basic requirement for survival craft, then provide for various alternatives for vessels operating under certain conditions. For hypothermia risk, water temperature is the primary concern, although the degree of risk at a particular water temperature varies widely for different individuals. The alternatives proposed in this notice are based on the assumption that water temperatures above 15 °C (59 °F) do not present an immediate risk of hypothermia. The various alternatives proposed are more fully discussed in the following section titled "Alternative Survival Craft Requirements for Small Vessels and Vessels in Protected Waters". For the alternatives based on water temperature, it is not intended that the water temperatures in which the vessel operates be continuously monitored. The survival craft requirements for the vessel would be established according to the routes on which it operates, and the normal prevailing water temperatures during the times of the year it operates on those routes.

(2) One comment on the ANPRM stated additional lifeboats and liferafts would severely affect passenger vessels operating in river service, with a doubtful result. The regulations proposed in this notice may, but not necessarily, result in an increase in lifeboats and liferafts over present requirements. The ANPRM did not present specific regulatory proposals for these vessels, as this notice does.

Alternative Survival Craft Requirements for Small Vessels and Vessels in Protected Waters

The proposed requirements for totally enclosed lifeboats and partially enclosed lifeboats are appropriate for large vessels operating in waters where severe sea conditions can be anticipated. Alternative arrangements are proposed for certain other vessels.

a. Under proposed § 199.201(e), passenger vessels on lakes, bays, and sounds service, and those in river service would be permitted to carry open lifeboats for that portion of the complement that would have to be accommodated in lifeboats. Most passenger vessels in these services, however, can be expected to use one of the other alternatives discussed in the following paragraphs.

b. Under proposed § 199.201(f), passenger vessels under 500 tons gross tonnage with fewer than 200 persons on board could carry liferafts for all of the persons on board. A similar provision for cargo vessels less than 85 m (278 ft.) long in ocean and coastwise service is proposed in § 199.261(d). Cargo vessels under 85 m long in Great Lakes service; lakes, bays, and sounds service; and those operating on the continental shelf of the United States would be covered under proposed § 199.261(f). No boats would be required other than rescue boats. These alternatives are based on Regulations III/20.1.5 and III/26.1.3 of SOLAS 74/83. Nonself-propelled vessels (barges) are not covered under SOLAS 74/83, but the liferaft alternative would also be permitted for those vessels under proposed § 199.261(d) and (f).

(1) One comment addressed the substitution of liferafts for lifeboats on passenger vessels by stating that it was not supported, but no reasons were given. Substitution of liferafts for lifeboats on small vessels is permitted by the present regulations, and has proved to be a satisfactory arrangement to date.

(2) One comment stated that the present requirement for 100% capacity in inflatable liferafts should be retained for offshore supply vessels and also for nonself-propelled vessels. These vessels would continue to have a requirement for 100% capacity in inflatable liferafts under proposed § 199.261(f).

c. Proposed § 199.201(g) would allow ferries not in ocean service or short international voyage service, or a passenger vessel in lakes, bays, and sounds service, or in river service, to carry inflatable buoyant apparatus instead of lifeboats or liferafts. Inflatable buoyant apparatus are a relatively new type of survival craft. They are similar to inflatable liferafts, except that they have no canopy, can be used either side up, and carry only a limited amount of equipment. These devices provide important protection from hypothermia since they support their occupants completely out of the water. The proposed regulations would limit the services in which they could be used, because the lack of a canopy would compromise their hypothermia protection in severe sea conditions. Since they have no canopy, they can be rapidly boarded by a large number of persons with a minimum amount of supervision, which is very important in high density passenger service. The new inflatable buoyant apparatus, the proposed requirement for survival craft in § 199.201(g), and the retrofit requirement proposed in § 199.15(k), is the Coast Guard's response to a provision in the 1984 Coast Guard Authorization Act which required the Secretary of Transportation to proceed vigorously with efforts to develop improved lifesaving equipment for use on passenger ferries.

Additionally, we believe that the use of inflatable buoyant apparatus will result in the most cost effective way to provide out of the water flotation for survivors of a ferry casualty because (1) inflatable devices store in a compact form, limiting the amount of structural modifications that have to be made to accommodate them, (2) inflatable buoyant apparatus are significantly less bulky on a per-person basis than even inflatable liferafts, so that comparatively fewer of them are needed, (3) they do not carry a large amount of survival equipment, so that bulk, weight, and cost are further reduced, and (4) because their open structure allows one person to supervise the launching and loading of several devices at one time, there is no requirement to have a lifeboatman or other trained crewmember for each individual device. On high density ferry

services, a requirement for one crewmember for each device could significantly raise the number of crewmembers required, for the sole purpose of being available for an abandon-ship casualty. With the appropriate arrangement of inflatable buoyant apparatus, we believe that vessels will generally not have to increase their crew size for the sole purpose of manning the survival craft.

d. Proposed § 199.201(h) would permit passenger vessels operating in warm waters (15 °C (59 °F)) and not in ocean, short international voyage, or coastwise service to increase the number of persons carried. Survival craft would be required only for 10% of the persons on board. The number of persons carried may exceed the capacity of the survival craft provided because each person will be provided with a lifejacket, the warm water does not present an immediate hypothermia threat, and rescue would be quickly available in the areas where these vessels operate. The 10% survival craft requirement is retained to provide for persons who may be incapacitated and for other persons attending them. Present regulations in 46 CFR 75.10–20(a) permit reductions in lifesaving equipment in certain areas and at certain times of the year regardless of prevailing water temperature.

e. Proposed § 199.201(i) would permit passenger vessels not in ocean, short international voyage, or coastwise service to operate in shallow water near land without survival craft. A similar alternative is proposed for cargo vessels in § 199.261(j). These proposed regulations are similar to existing passenger and cargo vessel regulations permitting vessels to operate without survival craft in waters less than 3 ft. deep. There are few, if any vessels, believed to be taking advantage of these regulations, therefore they are being considered for elimination from the final rules. Comments are specifically requested as to the usefulness of these proposals.

f. Cargo vessels in river service would be required to carry a combination of survival craft to accommodate all persons on board under proposed § 199.261(g).

g. Proposed § 199.261(i) would permit cargo vessels operating in warm waters (15 °C (59 °F)) and not in ocean or coastwise service, and vessels operating on the continental shelf in the Gulf of Mexico, to carry life floats instead of lifeboats or liferafts. The warm water in these areas does not present an immediate hypothermia threat and rescue would be quickly available in the areas where these vessels operate.

h. Present regulations in 46 CFR 94.10–20, 94.10–25, 94.10–45 and 94.10–50 cover alternative lifesaving equipment requirements for fireboats, wrecking vessels, fishing vessels, pilot boats, and yachts. Ordinarily vessels of these types are inspected vessels only if propelled by steam. Virtually all vessels of these types are now motor propelled and covered under either 46 CFR Subchapter C, or 33 CFR Subchapter S, so these regulations are obsolete. There are no corresponding regulations proposed in this notice.

Improved Distress Communications

a. Proposed § 199.62 would require each vessel in ocean, short international voyage, coastwise or Great Lakes service to have survival craft portable two-way radiotelephone apparatus. These radios are intended for communication between survival craft, between survival craft and the vessel, between the vessel and its rescue boat, and for communication with on-scene rescue units. These portable radios would not be required for each survival craft, but at least three would have to be on each vessel. The Federal Communications Commission (FCC) adopted final rules on approval of this equipment on May 1, 1985 (50 FR 18489).

(1) Two comments wanted clarification on whether or not these radios were to be portable or permanently installed, and whether existing equipment on the vessel could be used to meet the requirement. Three other comments stated that equipment already in use would meet this requirement. This equipment is intended to be the same as or similar to the two-way radio equipment typically used on vessels for routine operations, so although the requirement is new, it should not result in the carriage of additional equipment on most vessels.

(2) One comment stated that two-way radiotelephone apparatus now used as operational equipment on board vessels is not kept in good operational condition, and that regulations were needed to cover maintenance and spare parts requirements. The FCC is responsible for regulations covering radio equipment and its operation. That agency requires operational testing of this equipment once a week in its regulations at 47 CFR 80.834(c). This testing should determine if the equipment is in good operating condition and whether or not it needs repair. This comment has been forwarded to the FCC for their consideration.

b. On March 18, 1974, the Coast Guard published rules that required inspected vessels in ocean and coastwise service to carry Class A Emergency Position Indicating Radio Beacons (EPIRBs) operating on 121.5/243 MHz (39 FR 10139). Vessels in coastwise service could escape the requirement under certain conditions. On October 18, 1984, the Coast Guard published final rules that required vessels operating on the Great Lakes to carry Class C EPIRBs operating on VHF–FM channels 15 and 16 (49 FR 40407).

(1) For vessels in ocean, short international voyage, coastwise, or Great Lakes service, the regulations proposed in § 199.64(a) would require on each side of the vessel, a Federal Communications Commission (FCC) Type Accepted float-free EPIRBs operating on the dedicated satellite frequency of 406.025 MHz. Elimination of the exemption for coastwise service is proposed since rapid alerting and location of vessels in distress in this region is as necessary as it is further at sea. The "406" MHz Satellite EPIRB system not only provides improved alerting and locating over conventional EPIRBs operating on 121.5/243 MHz, but also includes safeguards to prevent problems arising from false alarms. False alarms are a major problem which limit the effectiveness of the 121.5/243 MHz system. Although "COSPAS/SARSAT" search and rescue satellites can receive 121.5 MHz signals, 121.5/243 MHz EPIRBs are not designed as "Satellite EPIRBs" and their coverage area and alert and locate ability is significantly inferior to that of the 406 MHz Satellite EPIRB. Necessary final rules permitting manufacture and sale of 406 MHz Satellite EPIRBs were published by the Federal Communications Commission (FCC) on September 26, 1988 (53 FR 37308). These beacons should be readily available later this year.

(2) The proposed regulations would require two 406 MHz Satellite EPIRBs, one on each side of the vessel. The present regulations require only one Class A EPIRB. This proposal is made because vessels often list strongly to one side, or roll over before sinking, which could render a single EPIRB inoperable. A fire or explosion could also destroy a single EPIRB, or make it inaccessible. The second EPIRB also provides added reliability. We also believe that under certain conditions, these EPIRBs can be substituted for the Class S EPIRBs or transponders discussed in paragraph (c.) which follows. The substitution is proposed in § 199.64(b)(3). Having two 406 MHz Satellite EPIRBs on the vessel could be more economical than having one 406 MHz Satellite EPIRB and two Class S EPIRBs or transponders on the vessel.

(3) The Coast Guard recognizes that many vessels have Class A EPIRBs in compliance with the present regulations, and that this equipment has a long service life. Therefore, proposed § 199.64(d) would allow Class A EPIRBs that are installed on or before the effective date of the final rules to be carried for about 6 years. This phase-in period is identical to the period provided for fishing vessels, fish processing, and fish tender vessels under a final rule published in the Federal Register on August 17, 1988 (53 FR 31004). At the present time a revision to SOLAS 74/83 is under consideration at IMO, which would introduce the Global Maritime Distress and Safety System (GMDSS). The revision is expected to be accepted at an international conference in late 1988. Satellite 406 MHz EPIRBs are part of the GMDSS, and the revision could come into force as soon as 1993, with all ships on an international voyage required to carry Satellite EPIRBs at that time. In spite of the 6-year phase-in period proposed in this notice, vessels on international voyages would have to comply with any earlier SOLAS amendment date in order to be issued SOLAS Safety Certificates.

(4) For vessels in Great Lakes service, the regulations proposed in § 199.64(e) would also require the 406 MHz Satellite EPIRB to replace the two Class C EPIRBs within 6 years. The Class C EPIRBs do not have the false alarm problem that Class A EPIRBs do and can provide an immediate alert without having to wait for a satellite to pass within range, since the Great Lakes have virtual full coast station coverage of the VHF–FM system on which Class C EPRIBs operate. On the negative side, the Class C EPIRB's short low-power alert signal on channel 16 can easily be drowned out by more powerful transmissions on that busy channel. They are not recognized as a distress device in Canada, or anywhere else outside the United States. Because of the limited use of these devices, EPIRB transmissions on channel 16 often aren't recognized by persons guarding the channel, and the transmission may not be identified as a distress.

(5) Under proposed § 199.66, each vessel on an international voyage now required to carry a portable radio apparatus for survival craft (portable lifeboat radio), would not have to carry one once the vessel is equipped with the 406 MHz Satellite EPIRB. The United States will have to file a SOLAS Equivalency Statement with IMO for this rule, since the portable radio apparatus will still be required under SOLAS 74/83 until the SOLAS amendments providing for the GMDSS come into force. The equivalency statement would be based on the vessel carrying a float-free Category 1 Satellite EPIRB, in addition to locating equipment for survival craft consisting of Class S EPIRBs, transponders, or Category 2 Satellite EPIRBs as discussed in paragraph (c.), which follows.

(6) Three comments opposed EPIRBs for inshore or river operations. The regulations proposed in this notice would not require any EPIRBs on vessels in river service, or in lakes, bays, and sounds service.

c. Regulation III/6.2.3 of SOLAS 74/83 requires each vessel to carry two survival craft EPIRBs, one on each side of the ship, stowed in a way that they can be rapidly placed in survival craft. Survival craft EPIRBs are designated as Class S EPIRBs by the FCC, and the rules published by the FCC on May 1, 1985 (50 FR 18489) included technical requirements for them. Under the GMDSS, the Class S EPIRB would be replaced by a Search and Rescue Transponder (SART). These SARTs would be required to be stowed one on each side of the ship in such locations that they can be readily placed in any survival craft, or else one would have to be carried in each survival craft. The Coast Guard is proposing that each lifeboat and rescue boat carry either a Class S EPIRB, a 406 MHz Satellite EPIRB, or a SART instead of having just one stowed on each side of the vessel for use of all the survival craft on the vessel. This arrangement should provide more protected stowage for the EPIRB or SART. More importantly, it simplifies the abandonment procedure by eliminating an additional item that has to be remembered, and since each lifeboat and rescue boat would be provided with an EPIRB or SART, survivors of a casualty should be able to be more rapidly located. For liferafts, the proposed § 199.64(b) would require one EPIRB or SART on each side of the vessel unless each liferaft carries one of these devices. Carriage of EPIRBs or SARTs in the liferafts would be desirable for the same reasons as discussed for lifeboats and rescue boats, but the option being proposed would allow the saving of weight in liferafts limited to 185 kg under SOLAS 74/83 Regulation III/38.2.2. Note that the present FCC regulations at 47 CFR 80.833(b) require Class S EPIRBs to be stowed in survival craft, so if this proposal is adopted as a final rule, the Coast Guard will have to request a change in the FCC rules. The proposed regulations requiring an EPIRB or SART in survival craft are consistent with a recommendation on survival craft EPIRBs made by the Coast Guard Marine Board of Investigation on the sinking of the drillship GLOMAR JAVA SEA. Since the EPIRB or SART would be required to be carried in lifeboats and rescue boats, "EPIRB/SART" is listed as an item of survival craft equipment in proposed § 199.175(c)(12). Lifeboats and rescue boats equipped with SARTs will not have to carry the passive radar reflector required in proposed § 199.175(c)(34) and under SOLAS 74/83 Regulations III/38.5.1.14 and III/41.8.30.

(1) The ANPRM of December 31, 1984 stated that the Coast Guard would propose that a Class S EPIRB in a float-free liferaft be required to activate automatically when the raft floats free and inflates. The present requirement for the Class A float-free EPIRB on the vessel could then be eliminated. One comment identified a number of potential problems with the automatic activating EPIRB in a float-free raft. Another favored retaining the Class A EPIRB in addition to the Class S EPIRB. Since neither the Class S EPIRB nor the SART will have a 406 MHz signal, neither can perform the function of the 406 MHz Satellite EPIRB; therefore, neither can replace the 406 MHz Satellite EPIRB whether automatically activated or not. For this reason, the regulations proposed in this notice do not propose automatic operation for any Class S EPIRBs or SARTs.

(2) Two comments suggested that new EPIRBs for survival craft should not be required until the GMDSS and the international rescue apparatus are in place. Class S EPIRBs and SARTs do not need any special international rescue apparatus to operate. Class S EPIRBs function with existing aeronautical radios, direction finders on larger Coast Guard cutters, and the COSPAS/SARSAT satellite system. SARTs function with most radar sets which operate in the bands 9200–9500 MHz or 9300–9500 MHz. The GMDSS is expected to be adopted (although not fully implemented) by the time the final rules arising from this notice are in effect.

(3) Vessels subject to SOLAS 74/83 built since July 1, 1986 have been required to be equipped with Class S EPIRBs. Class S EPIRBs have circuitry similar to Class A EPIRBs, so they will be detected by COSPAS/SARSAT satellites. Consequently, § 199.175(c)(12) would permit continued use of Class S EPIRBs. The United States is considering allowing Class S EPIRBs or 406 MHz Satellite EPIRBs to be used instead of SARTs even after the GMDSS is in place. In order to do this, the United

States will have to file an equivalency statement with IMO when the GMDSS requirement for SARTs goes into effect. SARTs allow any ship with a 9 GHz radar set to locate survival craft at a range of 6 to 10 nautical miles. These detection ranges were determined in testing using Coast Guard cutters and aircraft. Aircraft with compatible radar can locate SARTs at a range of up to 20 nautical miles. About half of the Coast Guard's aircraft do not have compatible radar and would not detect SARTs. Commercial airliners and most military aricraft would also be incapable of detecting SARTs. On the other hand, Class S EPIRBs and 406 MHz Satellite EPIRBs are detectible at relatively long ranges by Coast Guard, civil, and military aircraft. (Satellite EPIRBs operation on 406 MHz will also have a low-power homing beacon operating on the same 121.5 MHz frequency as Class S EPIRBs.) Large Coast Guard cutters can also home on this signal, although few other ships have this capability.

(3) Two comments supported the proposal to have an EPIRB in each survival craft. Another comment supported an EPIRB in each lifeboat, but not in the inflatable liferafts, stating that their usefulness was doubtful in view of the other EPIRBs on board, and their functional reliability in a liferaft would be questionable. The comment did not explain why the reliability of an EPIRB in the liferaft was doubtful. Two comments concerned the possibility that an excessive number of EPIRBs would create problems with multiple transmission sources. Another did not agree that pilferage of EPIRBs was a problem, or that they were necessarily more secure in a lifeboat. The same comment expressed doubt that EPIRBs would be likely to be forgotten if they were stowed outside a survival craft. Our understanding is that pilferage of Class A EPIRBs has been a problem, and that they are often locked up when the vessel is in port. If survival craft EPIRBs and SARTs are not stowed in the survival craft, they would have to be kept in prominently marked boxes on deck. Stowage in a lifeboat equipment locker, and especially in a packed inflatable liferaft would appear to be more secure. We believe that the equipment should be stowed where it will be used—in the survival craft. Although a well-trained crew might not forget to carry the EPIRB or SART to the survival craft, the abandonment procedure should not be unnecessarily complicated by additional tasks to be carried out under emergency conditions. We believe that the requirement for carriage of EPIRBs or SARTs in lifeboats and rescue boats, and the option to carry EPIRBs or SARTs for liferafts either on deck or in the liferaft, provides the best balance among the various concerns.

Rapid Launching of Survival Craft

The ability to abandon a vessel quickly is often important in a marine casualty. A number of proposed new requirements are intended to make sure survival craft can be quickly boarded and launched.

a. Proposed § 199.110(c) would require muster and embarkation stations for survival craft boarded before they are launched, to be arranged to enable stretcher cases to be placed in survival craft. This proposal is based on Regulation III/11.6 of SOLAS 74/83 and is intended to make sure that loading of disabled persons into the survival craft does not unduly delay launching of the survival craft. One comment expressed concern that all totally enclosed lifeboats might not have entrances sized to allow stretcher loading, and that the embarkation areas on existing vessels might have to be rearranged to provide for stretcher access. There is no intent to have existing vessels rearranged to meet this requirement. All new totally enclosed lifeboats built to meet SOLAS 74/83 will have entrances sized to permit stretcher loading. The embarkation area on new vessels would have to be arranged so that the stretcher could be loaded in the intended manner. This is a detail that will have to be considered when the vessel's embarkation area is designed, but it should not normally result in difficulty or additional cost.

b. Proposed § 199.110(d) would require embarkation stations to be located where it is not necessary to climb more than three steps or climb over obstructions to reach the embarkation station from the adjacent deck house and to board the survival craft from the embarkation station. There is no corresponding requirement in the present regulations because conventional launching arrangements require lifeboats to be lowered to the deck edge in order to be boarded. This arrangement limits climbing to board the survival craft. The proposed regulation would make sure that future survival craft installations continue to minimize the need for climbing to board the survival craft.

c. Proposed § 199.135(c) would require a gate or other suitable opening in the rail or bulwark adjacent to the stowage location of each liferaft and inflatable buoyant apparatus, not served by a launching appliance, unless the raft is mounted above the rail so it can be pushed overboard. This is to enable the liferaft or inflatable buoyant apparatus to be pushed over the side without lifting it. The need to lift a liferaft over the rail has been a problem in several casualties, and recommendations to provide an opening in the rail or bulwark were made by the Marine Board of Investigation on the explosion and fire aboard the SS PUERTO RICAN, and by the investigating officer on the fire aboard the M/V FINALISTA 100.

d. Proposed § 199.150(c) would require all new launching appliances to operate only by gravity or stored mechanical power. Launching systems that depend on manual power would not be permitted because of the long time required to launch a survival craft by manual means. Note, however, that proposed § 199.130(a)(2) would permit manual power to be used to bring a davit launched liferaft from its stowed position to the embarkation position. Stored electrical power (batteries) would also not be permitted because of reliability problems and diminished performance at low temperatures.

e. Proposed § 199.153(i) would establish a formula to determine the minimum lowering speed for survival craft launched by a system employing falls and a winch. The minimum speed increases as the launch height increases. The formula comes from Regulation III/48.2.6 of SOLAS 74/83, although that regulation does not state the condition of survival craft loading for which the formula is intended. Based on correspondence with several foreign maritime regulatory agencies, we believe that most of the drafters of SOLAS 74/83 intended this formula to apply to a fully loaded survival craft. Therefore, proposed § 199.153(i) would apply to a loaded survival craft. A related proposed regulation is § 199.153(j) which would require a lowering speed for a light survival craft to be not less than 70% of the speed required under § 199.153(i). One comment expressed concern about the application of this regulation to MODUs, because the high freeboards of these vessels would result in extremely high launching speeds when the formula in Regulation III/48.2.6 of SOLAS 74/83 is used. The comment pointed out that the SOLAS 74/83 regulation was developed for conventional vessels to limit the swinging of a lifeboat against the side of a rolling vessel as the lifeboat is launched, and that this should not be a concern on MODUs because of the clearance requirement which is covered under proposed § 199.650(d) of this notice. We agree with this comment, but the concern is addressed by the 30 m

launching height limit used to calculate the lowering speed under proposed § 199.153(i). No lifeboat would be required to have a loaded lowering speed greater than 1 m/sec.

f. Proposed § 199.153(k) would establish a maximum lowering speed of 1.3 m/sec. (256 ft./min.). Regulation III/48.2.7. of SOLAS 74/83 requires Administrations to establish a maximum lowering speed.

g. Proposed § 199.245(b) would require the total number of persons on board a passenger vessel to be able to be launched in survival craft within 30 minutes from the time the abandon-ship signal is given. Other vessels would be required to provide for abandonment in 10 minutes under proposed § 199.280(e). One comment expressed support for the 10 minute requirement on cargo vessels.

h. Conventional lifeboat launching systems require the lifeboat to be moved from its stowage position, down to an embarkation position at the edge of a lower deck. The boat is held close to the deck by "tricing pendants." "Frapping lines" are then passed around the falls and the tricing pendants let go. The boat is then boarded, the frapping lines let out, and the boat lowered. A superior method allows all persons to board the lifeboat at the stowage position and launch the lifeboat directly. The regulations proposed in this notice would allow this method of launching from the stowed position for passenger vessels (§ 199.220(a)(1)) and require it for other vessels (§ 199.280(b)). During discussions on this matter at IMO prior to the completion of SOLAS 74/83, the delegates decided not to require this method of launching on passenger ships because (1) it had not been demonstrated with the large lifeboats that are typical on passenger ships, and (2) if the lifeboats were located on one of the upper decks in a typical passenger ship configuration, passengers would be required to climb at least one additional deck level to board the lifeboats, and the loaded lifeboats higher on the vessel could adversely affect the stability of a ship already in danger. These problems could be overcome by a departure from typical passenger ship configuration by locating the lifeboats at a lower deck. Some ship designers have indicated an interest in stowing lifeboats at a lower level with launching directly from the stowed position. IMO committees are now considering a proposed recommendation to limit passenger ship lifeboats to a stowage height of 13.5 m (44.3 ft.). Comments are specifically requested on passenger ship lifeboat stowage and launching arrangements.

i. One new system of lifeboat launching is the free-fall system. It is intended to improve the speed and reliability of lifeboat launching by eliminating the need to lower the lifeboat to the water on a wire. Instead, the boat is boarded on the vessel and, when all on board are strapped into their specially designed seats, the boat is released and allowed to drop into the water. The design of the boat and its angle of entry into the water are such that the boat with the survivors can safely endure the impact with the water, and the boat is carried safely away from the vessel. SOLAS 74/83 provides for the approval of free-fall lifeboats in Regulations III/44.6 and III/48.4, and the Coast Guard has already approved one such a system as equivalent to a conventional launching system. Free-fall systems could be used in place of conventional launching systems on most vessels, except they would not be permitted on passenger vessels. Proper training essential for the safe use of free-fall systems is not practical for passengers. Free-fall lifeboats are most likely to be used on MODUs and on large cargo and tank vessels. Proposed § 199.261(c) would permit the use of free-fall launched lifeboats on the stern of cargo and tank vessels. This proposed regulation is based on Regulation III/26.1.2 of SOLAS 74/83. The lifeboats required on a MODU under proposed § 199.605(b) could be free-fall boats also. One comment expressed concern about the vulnerability of a stern-mounted free-fall boat to storm damage, and its ability to get away from the stern of the vessel. There are no free-fall lifeboats on U.S. flag cargo vessels or tankers, but several vessels registered in other countries are equipped with such systems. The boats are mounted high enough on the stern to prevent wave damage, and the motion given the boat by the free-fall ramp propels it away from the stern.

(j) Proposed § 199.135(f) would require float-free liferafts and inflatable buoyant apparatus to use hydrostatic release units for the first time. Existing regulations allow the use of float-free arrangements which keep the raft from shifting on deck, but which permit it to float upward and away from a sinking vessel unrestrained. This arrangement, and the arrangement of the present Coast Guard approved hydraulic release, require that the raft painter be secured to the vessel by a weak link, which breaks under the buoyant force of the raft. This keeps the sinking ship from sinking the raft by dragging it under by its painter. Unfortunately, this arrangement also means if the raft is launched manually, it is secured only by the weak link. The weak link can easily break under the force of wind and waves, which can lead to loss of the raft before it is boarded. This problem can be solved by belaying the painter to a cleat, but this defeats the protection of the weak link if the vessel sinks. Proposed § 199.135(f) and new hydrostatic releases approved under SOLAS 74/83 solve these problems by allowing the raft to be manually released from the hydrostatic release, without releasing the painter from the vessel. The painter remains secured to the vessel through the hydrostatic release. If the vessel sinks, the hydrostatic release releases the painter, which remains secured to the vessel only by the weak link. The weak link is loaded only if the vessel sinks. This system has been required by other countries for many years, and seems to work well.

Launching at a 20° List

Present regulations and SOLAS 74/83 requirements generally require survival craft to be launched with the vessel trimmed to 10° and listed to 15°. SOLAS 74/83 generally requires survival craft launching appliances to operate at a 10° trim and 20° list. The drafters of SOLAS 74/83 Chapter III added the requirement for operation at an additional 5° list to allow for launching of survival craft if the decision to abandon ship is made with the ship listing as much as 20°.

a. Proposed § 199.130(a)(1)(iii)(C) would require the survival craft in the embarkation position to be above the waterline with the vessel listed to 20°.

b. Proposed § 199.150(a)(1)(ii) would permit certain survival craft boarded from a position less than 4.5 m (14 ft., 9 in.) above the waterline (generally liferafts) to not have a launching appliance if the survival craft is stowed for launching directly from the stowed position under unfavorable conditions of trim of up to 10° and with the vessel listed up to 20° either way.

c. Proposed § 199.150(b) would require launching appliances to safely lower survival craft against a trim of up to 10° and a list of up to 20° on the high side, and the greater of 20° or the degree of list where the survival craft becomes waterborne, whichever is the greater, on the low side.

d. Proposed § 199.150(d) would require a factor of safety of 4.5 for launching appliances and their attachments in accordance with Regulation III/48.1.8 of SOLAS 74/83. Present regulations require a factor of safety of 6; however, the present factor of safety applies to a vessel with a list of 15°. The factor of safety of 4.5 would apply to the new 20° list requirement, which for davits should

be roughly equivalent to a factor of safety of 6 at 15° list.

e. Proposed § 199.153(d) would require falls long enough for the survival craft to reach the water with the vessel in its lightest seagoing condition, under unfavorable conditions of trim and with the vessel listed up to 20° either way.

f. Proposed § 199.157(d) would require a davit span for each open lifeboat and partially enclosed lifeboat. Each davit span would have to be provided with not less than two lifelines of sufficient length to reach the water with the vessel in its lightest seagoing condition, under unfavorable conditions of trim and with the vessel listed up to 20° either way.

g. Proposed § 199.320(b) would require survival craft on an oil tanker, chemical tanker, or gas carrier to be safely lowered on the lower side of the vessel at the final angle of heel calculated under—

(1) MARPOL 73/78 in the case of an oil tanker;

(2) The International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (IBC Code) in the case of a chemical tanker; or

(3) The International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (IGC Code) in the case of a gas carrier.

Availability of Survival Craft

a. Proposed § 199.261(b)(2) would require ocean and coastwise cargo vessels and other ocean and coastwise vessels required to meet the cargo vessel regulations, to carry liferafts for the total number of persons permitted on board. These liferafts are in addition to the lifeboats carried. This proposed regulation is based on Regulation III/26.1.1.2 of SOLAS 74/83, and is an increase over present requirements. Both Coast Guard regulations and SOLAS 1974 require these vessels to carry liferafts for 50% of the persons on board. These liferafts are required to automatically float free if the vessel sinks so that there are survival craft available in case the lifeboats can not be launched before the vessel sinks. The liferafts are also available in case the lifeboats can not be used for some other reason. A sufficient number of liferafts should therefore be available to accommodate all persons on board the vessel.

(1) Additional liferafts were recommended by the National Transportation Safety Board as a result of its investigations of the casualties involving the TEXACO OKLAHOMA and the PANOCEANIC FAITH.

(2) One comment on the ANPRM stated that 100% liferaft capacity was probably unnecessary since all hands would probably not get clear of a vessel that sank too rapidly to launch the lifeboats. The comment may be correct for some casualties, but the recommendations cited in the preceding paragraph arose from casualties where the present 50% liferaft capacity was not adequate. This matter also was discussed at length by the Lifesaving Appliances Subcommittee and the Maritime Safety Committee of IMO before the 100% liferaft requirement was finally adopted as part of the new Chapter III of SOLAS 74/83. A number of other countries cited casualties to their vessels in which the present 50% liferaft capacity was inadequate.

b. The present regulations for seagoing cargo barges in 46 CFR 94.10–15 require only a lifeboat with a capacity of 80 cubic feet, or the equivalent capacity in inflatable liferafts for those barges small enough to qualify for substitution of liferafts for lifeboats. For tank barges in ocean and coastwise service, 46 CFR 33.05–5 and 33.05–15 require lifeboats of 125 cubic foot capacity. A typical 80 cubic foot capacity lifeboat would be about 13 feet long with a capacity of 5 persons. A typical 125 cubic foot capacity lifeboat would be about 16 feet long with a capacity of 9 persons. Open lifeboats this size would probably be inadequate in heavy seas, and no provision is made to provide spare survival craft in case the boat is lost or made unusable. Under proposed § 199.261(d), most seagoing cargo barges would be required to carry an inflatable liferaft on each side capable of accommodating all persons permitted on board the barge. Under proposed § 199.310(c), tank barges over 500 tons gross tonnage would have to have the same fire-protected lifeboats as self-propelled vessels.

Survival Craft and Rescue Boat Equipment

Proposed § 199.175(c) and Table 199.175(c) contain requirements for survival craft and rescue boat equipment. Note that the liferaft equipment covered in this section is for rigid liferafts only. There are no rigid liferafts approved by the Coast Guard for new production at this time. Equipment for inflatable liferafts is covered in 46 CFR 160.051, and revisions to that section to meet the SOLAS 74/83 requirements will be proposed under a separate notice. The quantities of equipment have been revised for vessels in ocean and short international voyage service to be consistent with SOLAS 74/83. Few revisions have been made to the quantities of equipment required for vessels in Great Lakes; lakes, bays, and sounds; and river services. Comments are specifically requested on whether or not additional changes should be made to the equipment lists for these services. Items to consider adding are first aid kits, heaving line, knife or jackknife, ladder, orange smoke signals, and a signal mirror. The lifeboat equipment list has been revised to eliminate special equipment requirements for seagoing barges and for Great Lakes cargo vessels not carrying cargo. In the following discussion, the item number refers to both the paragraph number under proposed § 199.175(c) and the number used in Table 199.175(c).

a. Item 3 covers requirements for lifeboat bilge pumps. The size of the bilge pump is governed by the cubic capacity of the lifeboat under present regulations, but cubic capacity will no longer be used to describe lifeboat size. Instead, the persons capacity is used to determine bilge pump size. The size 1 bilge pump has also been deleted since there have been no Coast Guard approved size 1 bilge pumps produced in over 10 years.

b. Item 4 covers boathooks. The 1¾" and 2" pole diameter sizes are no longer listed since they are no longer generally available. Boathooks would be required to be of at least the 1½" size under item 4 as proposed.

c. SOLAS 74/83 requires lifeboats and liferafts to carry 3 can openers. Item 6 covers this proposed requirement. The can opener in the Coast Guard approved jackknife under item 20 could be used to meet the requirement for one of these can openers.

d. Item 7 covers the proposed requirement for a compass on a lifeboat and rescue boat. Coast Guard approved compasses in open lifeboats and many totally enclosed lifeboats are now mounted in a box which is stowed in an equipment locker. The proposed regulation would require the compass in a totally enclosed lifeboat to be permanently installed at the steering position. This can be done in an enclosed lifeboat since the compass would be adequately protected from the weather by the boat enclosure, it would reduce the need for stowage space, it would make the compass available for immediate use, and it could make the compass less susceptible to loss. In other than totally enclosed lifeboats, the compass could either be permanently installed, or be of the conventional removable arrangement.

e. The dipper required in a lifeboat for collected rain water under SOLAS 74/83 is covered in item 9.

f. Item 16 covers flashlights. The Coast Guard removed 46 CFR 160.008 in a

Final Rule published May 18, 1988 at 53 FR 17702. That specification regulation was replaced by American Society for Testing and Materials (ASTM) Standard F1014. Item 16 reflects the revision.

g. Item 22 covers proposed requirements for the lifeboat and rescue boat boarding ladder. For the first time, a permanently installed rigid ladder would be allowed for this purpose in place of a rope ladder. Present regulations require the rope ladder to be kept on the side benches rigged ready for immediate use. The proposed regulations would now require a rope ladder to be rigged outboard at all times. If these boats are empty and not launched when a vessel sinks, they can be torn loose of their davits as the vessel sinks and could be used by survivors that are cast into the water. The ladder needs to be readily available for the use of those that need to board the boat from the water. Comments are specifically requested on problems or advantages involved in keeping the ladder rigged outboard.

h. Item 23 covers proposed requirements for the lifeboat lantern. Present regulations require an oil lantern; however, under the proposed regulations, totally enclosed and partially enclosed lifeboats would have to have an interior lighting system installed by the manufacturer. Item 26, matches, and item 29, illuminating oil are related items.

i. Item 28 covers the requirement to carry oars, but for new lifeboats, paddles would be acceptable if the manufacturer of the lifeboat demonstrates that paddles can be used for manual propulsion. Totally enclosed lifeboats are generally not arranged for efficient operation under oars.

j. Item 31 would establish a minimum length of 15 m (50 ft.) for lifeboat painters in order to be consistent with SOLAS 74/83. SOLAS 74/83 also requires a minimum length of two times the distance from the stowage position to the waterline; however, item 31 would retain the requirement in the present regulations for a length of at least 3 times the distance from the stowage position to the waterline.

k. Item 32 contains proposed revisions to the requirements for provisions. Existing regulations require 2 lb. of hard bread plus 1 lb. of condensed milk per person in each lifeboat. Hard bread has not been used for many years, but provision manufacturers have instead provided a mixture of biscuits, sugar, and sometimes other components, which together with the condensed milk provided about 5,000 calories of food energy value per person. Recent experience with major commercial vessel casualties indicates that the lifeboat rations are rarely, if ever used. Water is more important to long term survival. Consequently, the proposed regulations would require emergency provisions with a total food value of at least 10,000 kJ (2,390 calories), or roughly half of the present requirements. This is consistent with Regulation III/41.8.12 of SOLAS 74/83. Condensed milk would no longer be part of the ration requirement. The condensed milk was once intended for babies and those with injuries that prevented them from chewing. New Coast Guard approved rations will have to include a water soluble component to take care of these needs. Furthermore, condensed milk increases the body's need for water and is therefore not appropriate as a sea survival ration. Condensed milk has also not been available in corrosion-resistant containers, making it especially troublesome for stowage in lifeboats.

l. Item 35 would require a rain water collection device for many totally enclosed lifeboats. The water tanks in lifeboats are required to be designed for the stowage of collected rain water and open lifeboats are required to be equipped with protective covers that incorporate a rain water collection device. The rain water collection device requirement would result in all lifeboats being able to collect and make use of rain water.

m. Item 38 contains the requirement for sea anchors. SOLAS 74/83 no longer requires storm oil for the totally enclosed and partially enclosed lifeboats now required under that convention. Storm oil is dispensed from a container attached to the sea anchor, and is intended to lessen the chance of waves breaking over the lifeboat. The enclosures of the totally enclosed and partially enclosed lifeboats make storm oil less important. The proposed regulations would also not require storm oil in totally enclosed and partially enclosed lifeboats, but would continue to require it to be carried in open lifeboats.

n. Item 39 would require each new lifeboat and rescue boat on vessels in ocean, short international voyage, coastwise, and Great Lakes service to be equipped with a searchlight. This is a new requirement, since in the past, searchlights were required only on certain lifeboats on passenger vessels.

(1) Regulations III/41.8.29 and III/47.2.2.11 of SOLAS 74/83 require searchlights on lifeboats and rescue boats. Searchlights were not required on lifeboats in the past, since many lifeboats did not have engines and electrical systems. All new lifeboats in these services would be engine driven, and would therefore have a means to keep the searchlight battery charged. Searchlights have also become more important since the widespread use of retroreflective material on survival equipment has made searching for survivors in the water at night a realistic possibility.

(2) Passenger vessel searchlights were previously approved under 46 CFR 161.006. This specification regulation originated over 40 years ago and has become obsolete. The American Society for Testing and Materials has developed a voluntary consensus standard (ASTM F1003) for lifeboat searchlights meeting the SOLAS 74/83 requirements. Item 39 proposes to require a searchlight certified to meet ASTM F1003. This notice also proposes removal of obsolete 46 CFR 161.006.

o. Item 40 would require lifeboats and liferafts on vessels in ocean, short international voyage, and coastwise service to carry a seasickness kit for each person, consisting of a seasickness bag and six doses of seasickness medication. This is consistent with Regulations III/38.5.21 and III/41.8.21 of SOLAS 74/83. The Marine Board of Investigation on the SILVER DOVE also recommended that seasickness medication be carried in lifeboats. Present regulations require inflatable liferafts to carry seasickness medication. The combination of ephedrine sulfate and promethazine hydrochloride prescribed as one option in the proposed regulations has been found by the Coast Guard to be the most effective seasickness remedy available at the present time. These drugs are taken orally and must remain in the digestive system for several hours to be completely absorbed. The other option, scopolamine in a transdermal patch, has been found to be significantly more effective in preventing seasickness than both dramamine and meclezine in clinical tests, according to its manufacturer. Its advantage is that since its medication is released through the skin, it will not be lost due to regurgitation as oral medication will. It takes four to six hours to become fully effective, and one patch provides about three days of effective medication. Both medication options seem to be reasonably stable throughout a wide temperature range, but both would probably be damaged by extended storage at temperatures above 50 °C (122 °F) or 55 °C (131 °F).

p. Regulation III/41.8.13 and III/41.8.14 of SOLAS 74/83 would require four parachute flares and six hand flares in lifeboats. Present Coast Guard regulations require 12 of each, and items

42 and 43 would continue to require 12 parachute flares and 12 hand flares in ocean, short international voyage, and coastwise services. These flares do not add great expense, but they can greatly assist search and rescue forces in locating survivors. For this reason, the present requirement is not proposed to be lowered to the minimum number required by SOLAS 74/83. Six hand flares and six parachute flares would also be required for the first time in survival craft on vessels in lakes, bays, and sounds service. These signals will assist searchers in locating survivors in these waters at night. Even recreational boats operating in some of these waters are now required to carry flares or other approved visual distress signals.

q. Item 46 would require survival instructions in each lifeboat in accordance with Regulation III.41.8.4 of SOLAS 74/83. Similar instructions are now required in all inflatable liferafts.

r. Item 48 would require thermal protective aids in lifeboats, liferafts, and rescue boats in ocean, short international voyage, and coastwise service. This item is discussed fully under the section on "Prevention and Reduction of Hypothermia."

s. Item 49 covers the lifeboat tool kit which must contain sufficient tools for minor adjustments to the engine and its accessories. The minimum contents of the kit are listed and are the same as the tool kit required in the present regulations. Comments are requested as to the adequacy of this kit and whether or not additional items such as a Phillips screwdriver need be added.

t. Item 51 would require 3 liters of water per person on lifeboats in ocean, short international voyage, and coastwise service in accordance with Regulation III/41.8.9 of SOLAS 74/83. The present regulations require 3 quarts of water per person. This change will result in an increase of approximately 6% in the amount of water carried. SOLAS 74/83 permits water to be dispensed with on liferafts with the SOLAS B pack (short international voyage). The regulations proposed in this notice would require water to be carried in liferafts on vessels in short international voyage service, since vessels in this service could be as far as 200 miles from port.

u. Items 25, 28, and 37 make reference to regulations in effect for vessels on June 30, 1986. These items are all components of traditional open lifeboats that would eventually be phased out of use. Present regulations contain detailed requirements for these components, which are not appropriate for modern performance-oriented regulations. These details would be included in a Navigation and Vessel Inspection Circular (NVIC) so that they will be available for reference as long as the old lifeboats continue in use. A draft of the NVIC has been placed in the docket for examination and copying.

v. A number of items have been determined to be unnecessary for use on a MODU, unless the MODU is on an international voyage. MODUs operating in U.S. waters are always in known locations and there are usually other vessels or offshore activities nearby, so that some items intended for long term survival are not necessary. These include item 28, oars; item 32, provisions; and item 35, rain water collection device.

w. The lifeline is no longer listed as an item of lifeboat equipment because it is already required as part of the lifeboat under 46 CFR 160.035.

Hyperbaric Lifeboats

Some lifeboat manufacturers now offer hyperbaric lifeboats which include a diver decompression chamber built into a totally enclosed lifeboat. Divers must spend many hours or days allowing their bodies to readjust to atmospheric pressure after a long period underwater. Without proper decompression, divers can suffer serious injury or death. The hyperbaric lifeboat is intended to prevent these injuries in the event of abandonment of a vessel with decompressing divers aboard. The regulations proposed in this notice would not require hyperbaric lifeboats, but comments are specifically requested as to whether or not hyperbaric lifeboats or other provisions for decompressing divers, should be required on vessels supporting saturation diving operations.

Training and Drills

A number of revisions, including equipment requirements, are proposed to improve training and drills in survival systems. Many of the proposed revisions are consistent with recommendations made in a Coast Guard sponsored study titled "Shipboard Training and Maintenance for Merchant Vessel Survival Equipment." (See ADDRESSES section for information on how to obtain a copy of this report.) The proposed regulations are also responsive to recommendations to improve on-board training and drill requirements made by the Marine Boards of Investigation on casualties involving the GLOMAR JAVA SEA, the CHESTER A. POLING, the OCEAN EXPRESS, the EDMUND FITZGERALD, the TRANSHURON, and the WILLIAM T. STEELE. A similar recommendation was made by the National Transportation Safety Board after its investigation of the loss of the WILLIAM T. STEELE.

a. Proposed § 199.153(c) would require launching appliances using falls and a winch to have a single-part fall arrangement. This is not required under SOLAS 74/83, but is included to facilitate training and other operations where recovery of the boat is required. Complete launching of survival craft during drills is important to make sure the crew is fully familiar with the launching procedure. If recovery of the survival craft after launching is too difficult, launching will be avoided. The presence of a heavy sheave block at the lower end of a multiple-part fall arrangement can make recovery difficult. It can make reattachment of the falls to the survival craft dangerous, even in good weather. One of the findings of the Marine Board of Investigation on the GLOMAR JAVA SEA, was that difficulty in reattaching the falls to the lifeboats discouraged the crew from launching the boat during drills. The single-part fall requirement would make a block at the lower end of the falls unnecessary. In addition to removing a hazard, facilitating recovery of the boat should encourage launching during drills. One disadvantage to the single-part fall requirement is that the fall wire would have to be about 40% larger in diameter than the wire on a two-part fall, making it stiffer and requiring larger sheaves and drums on the launching equipment.

b. Present regulations require vessels to hold regular fire and boat drills. These drills have been traditionally considered and conducted as a single drill. The requirements in Regulation III/18 of SOLAS 74/83 revise many of the requirements for the "abandon-ship" drill and also include requirements for on-board training. For this reason, and to emphasize the difference between the fire training and drills and the abandon ship training and drills, the regulations proposed in this notice separate these requirements into separate sections, and require the abandon-ship drills and fire drills to be conducted separately. Drills would be somewhat more comprehensive than they are presently, but would only be required on alternating weeks on vessels other than passenger vessels. Present regulations require weekly drills on all vessels. Passenger vessels would continue to be required to conduct weekly drills. The proposed fire drill requirements are in proposed § 35.10–2 for tank vessels, § 78.17–55 for passenger vessels, § 97.15–40 for cargo and miscellaneous vessels, § 109.213 for MODUs, § 167.65–2 for public nautical school vessels, and

§ 196.15–40 for oceanographic research vessels. Abandon ship training and drills are covered in proposed § 35.10–1 for tank vessels, § 78.17–50 for passenger vessels, § 97.15–35 for cargo and miscellaneous vessels, and § 109.215 for MODUs. Under proposed § 167.65–1 for public nautical school vessels, and § 196.15–35 for oceanographic research vessels, drill requirements are those required for either passenger vessels or cargo vessels, depending upon the lifesaving equipment installed. New training and drill requirements are discussed in the following paragraphs. Two comments suggested that training on board MODUs should be done in accordance with IMO Resolution A.538(13), "Maritime Safety Training of Personnel on Mobile Offshore Units". The training and drill requirements proposed in this notice for MODUs are based in part on Resolution A.538, and are not inconsistent with it. Resoultion A.538 was also used in developing the revision to the IMO MODU Code discussed previously. On December 24, 1987, the Coast Guard published an NPRM on an Emergency Evacuation Plan for Manned OCS Facilities (52 FR 48717). The Final Rules for abandonment drills on MODUs developed as a result of this NPRM may have to be revised to take into account the Final Rules for Emergency Evacuation Plans, once those rules are published.

c. Requirements for mustering and attending to passengers are presently included in the passenger vessel regulations. A limited number of passengers may be carried on other vessels, so the proposed training and drill requirements for vessels other than passenger vessels include provisions for mustering and attending to passengers, when passengers are carried. Present regulations do not specifically require mustering of passengers, except for vessels on international voyages. Proposed § 78.17–50(b)(3) would require a muster of the passengers on other voyages, or at least calling the attention of the passengers to the emergency instructions on voyages of less than one day's duration. Under §§ 35.10–1(b)(3) and 95.15–1(b)(3), a similar requirement is proposed for other vessels when they carry passengers. This proposal is responsive to a recommendation of the National Transporation Safety Board arising from the grounding of the M/V PILGRIM BELLE in July 1985 (Recommendation M–86–60).

d. Abandon-ship training material would be required to be on board each vessel in accordance with SOLAS 74/83, regulations III/18.2 and III/51. This training material could either be in the form of manuals or audio-visual training aids. Much of this material would normally be supplied by the survival equipment manufacturer. Many manufacturers produce this material at the present time, and make it available to vessel operators. Two comments did not favor a requirement for training manuals since the ship's officers would be able to indoctrinate the crew in its use, and since certificated personnel (lifeboatmen) would have been trained in lifesaving equipment. The training material is important because of the growing diversity of lifesaving equipment. Licensed and certificated personnel will have received basic training using certain lifesaving equipment, but the various lifesaving equipment designs have important differences. The training material prepared by equipment manufacturers provides professionally prepared instructional material and important reference information.

e. Present regulations require weekly fire and boat drills. Under Regulation III/25.2 of SOLAS 74/83, weekly drills are required only on passenger vessels. Because of an increased emphasis on abandon ship training outside of drills, the proposals in this notice would require drills on alternating weeks on vessels other than passenger vessels. Passenger vessels would continue to be required to conduct weekly drills. All vessels would be required to make sure that each crew member participates in at least one abandon ship drill per month. Present regulations contain no participation requirements. Under the proposed regulations, abandon ship training would be required at the same intervals as the drills. This training would make use of the training materials discussed in the preceding paragraph. These new training and drill requirements should typically result in either an abandon ship drill or a training session being held each week.

f. Present regulations require each lifeboat to be lowered to the water at least once every 3 months. The regulations proposed in this notice would require each boat not only to be lowered, but also to be launched and maneuvered in the water once every 3 months. This requirement comes from Regulation III/18.3.7 of SOLAS 74/83.

g. The proposed regulations would require at least one abandon ship drill every 3 months to be held at night, unless the master determines it is unsafe to do so.

h. Vessels equipped with davit-launched liferafts would be required to have special training in the use of these rafts at intervals of not more than 4 months. Whenever practicable, this would include inflation and lowering of a liferaft. One comment suggested that a liferaft that is ready to be sent for servicing be permitted to be inflated and used for training. We have no objection to using a liferaft that is ready for servicing for this training. If a liferaft is used for this training, it could be a special liferaft intended for training purposes only, or a liferaft that is about to be sent for servicing.

Operational Readiness and Maintenance

a. One way to keep the lifeboats in good operating condition and keep the crew familiar with their launching and operation is to use them when the vessel is in a harbor or at an anchorage. Regulations proposed in this notice would permit such use of the lifeboats provided there are sufficient survival craft on the vessel to accommodate those remaining on board. The proposed regulations are in § 35.90–20(c) for tank vessels, § 78.95–20(c) for passenger vessels, and § 97.90–20(c) for cargo and miscellaneous vessels. Under proposed § 167.35–90 for public nautical school vessels, and § 196.90–20 for oceanographic research vessels, operational readiness requirements are those required for either passenger vessels or cargo vessels, depending upon the lifesaving equipment installed. Operators should be aware that use of a lifeboat as a launch to carry passengers may require that the lifeboat also be certificated as a small passenger vessel under 46 CFR Subchapter T.

b. Regulations proposed in this notice would require falls on launching appliances to be turned end for end at intervals of not more than 30 months and replaced at least every five years. This proposal is intended to prevent the failure of falls due to corrosion and other deterioration. The proposed regulations are in § 35.90–40 for tank vessels, § 78.95–40 for passenger vessels, and § 97.90–40 for cargo and miscellaneous vessels. Under proposed § 167.35–90 for public nautical school vessels, and § 196.90–20 for oceanographic research vessels, maintenance requirements are those required for either passenger vessels or cargo vessels, depending upon the lifesaving equipment installed. Section 109.305 contains the corresponding proposal for MODUs. It contains an alternative for a fall which can not be turned end for end. Such a fall would have to be carefully inspected between 24 and 30 months after its installation. If the inspection shows that the fall is faultless, it may be continued in service

up to 48 months after its installation, when it must be replaced. This provision is based on one in the draft revision of the IMO MODU Code. Comments are requested on whether or not a similar provision should be made for other vessels not subject to SOLAS 74/83.

One comment on the ANPRM opposed this requirement on the basis that it would not be necessary if proper maintenance and visual inspections are done on the falls. Another stated that there was no record of failures justifying the requirement, and that turning falls end-for-end could not be done because the fittings on opposite ends of the falls were different. Visual inspections are not fully satisfactory for wire rope falls, since only the exterior of the rope can be seen. There is a continuing history of wire rope failures averaging between 3 and 4 incidents a year on inspected U.S. vessels. Many of these failures have occurred with falls that are 4 to 5 years old. Turning the falls end-for-end every 2½ years causes the heavy wear areas to be distributed over different portions of the falls and should therefore safely extend their life to 5 years. Manufacturers can design fall attachments with identical fittings at each end to facilitate turning them end-for-end. Approved retrofits are also possible for existing designs. Other national shipping administrations have had similar experience with wire rope falls, which is what led to the adoption of this requirement as a part of SOLAS 74/83.

c. Present regulations require flares and smoke signals to be replaced three years after the date of manufacture. Emergency drinking water is to be replaced five years after its date of packing. Regulations like these are difficult to comply with since the person maintaining these items must either know the federal regulations, or else must refer to them. A simpler method is to require expiration dates to be marked on the equipment so that outdated equipment is evident. Expiration dates also allow for the use of items that the manufacturer can show are more durable than the three year or five year service life. Many approval regulations already require expiration dates. This notice contains a proposed revision to 46 CFR 160.040–6 that would add expiration dates to line throwing device expendables. Other proposed regulations concerning annual inspection and repair would make use of these expiration dates. The proposed regulations are in § 35.90–75 (c), (d), and (e) for tank vessels; § 78.95–75 (c), (d), and (e) for passenger vessels; § 97.90–75 (c), (d), and (e) for cargo and miscellaneous vessels; and § 109.315 (c), (d), and (e) for MODUs. Under proposed § 167.35–90 for public nautical school vessels, and § 196.90–20 for oceanographic research vessels, maintenance requirements are those required for either passenger vessels or cargo vessels, depending upon the lifesaving equipment installed.

Additional Requirements for Tank Vessels

Tank vessels would be required to meet the same lifesaving system requirements as cargo vessels, with certain additions.

a. Under proposed § 199.310(a), tank vessels certificated to carry cargos that emit toxic vapors or gases would be required to have gas protected lifeboats. These are totally enclosed lifeboats with a compressed air system that can supply the occupants and the lifeboat engine for 10 minutes, in order to provide time to escape from a toxic gas cloud.

b. Proposed § 199.310(b) would require tankers carrying flammable cargos to have fire protected lifeboats. These lifeboats have the same compressed air system as gas protected lifeboats, but also have a water spray system designed to prevent the lifeboat from being damaged in a fire in the water for a period of at least 8 minutes. Fire protected lifeboats on tank vessels are required under regulation 26.1.7 of SOLAS 74/83. They were also recommended by the National Transportation Safety Board as a result of its investigation of the collision between the SS EDGAR M. QUEENY and SS CORINTHOS. One comment opposed the requirement for fire protected lifeboats on Great Lakes tankers, noting that these vessels are equipped with foam fire extinguishing systems, and that there had been no tanker casualties on the Great Lakes where fire protected lifeboats would have prevented any injury. The fire protected lifeboat is designed to go through fire on the water once the vessel has been abandoned. In such cases, the foam fire fighting system would be of little use since it is designed to fight a fire on deck, not on the water, and there would be no one on board to operate the system after the vessel is abandoned. Great Lakes tank vessels would be susceptible to the same fire hazards as any other tank vessel involved in a collision or explosion. The need for fire protected lifeboats was demonstrated in the collision between the SS EDGAR M. QUEENY and SS CORINTHOS. The possible consequences of fire on the water were also demonstrated when eleven crewmembers of the SS ESSO BRUSSELS died when their lifeboat was engulfed in fire on the water. The fire resulted when the SS C.V. SEA WITCH collided with the SS ESSO BRUSSELS in New York harbor in 1973.

c. Proposed § 199.310(b) would prohibit lifeboats with aluminum hulls or canopies on tank vessels. Proposed § 199.320(c) would prohibit aluminum launching appliances. Aluminum has a low melting point compared to fiberglass and steel, which are the other materials used to construct lifeboats. The low melting point makes the aluminum lifeboat susceptible to destruction in even a short exposure to fire on the deck of a vessel. Aluminum lifeboats have been destroyed on deck before they could be used in tank vessel accidents. The Marine Board of Investigation on the collision between the SS KEYTRADER and SS BAUNE recommended that the use of aluminum lifeboats be discontinued on tankers. A test performed by the Coast Guard in 1979 confirmed the susceptibility of aluminum lifeboats to rapid destruction in a short-term fire. This test is covered in a report titled "Transitory Fire Resistance of Tanker Lifeboats." A copy of this report has been placed in the docket for this project, and a limited number of copies are available. (See **ADDRESSES** section for information on how to obtain a copy of this report.)

d. Survival craft would be required to be stowed in positions protected from fire and explosion under proposed § 199.310(d). This requirement is intended to keep the survival craft out of the "line of sight" of the area most likely to be involved in an explosion in order to shelter them from the shock wave generated by the explosion. Comments are specifically requested on the problems or advantages involved in this proposed requirement.

e. Certain tankers have damage stability characteristics that provide a final angle of heel greater than the 20° list for which survival craft launching appliances are generally intended. Since these tankers might not be abandoned until that final angle of heel is reached, proposed § 199.320(b) would require launching appliances on the low side of the vessel to be able to be launched at the final angle of heel.

Additional Requirements for Special Purpose Ships and Nautical School Ships

The IMO Code for Special Purpose Ships is intended for vessels that frequently carry persons in addition to the crew. Examples are oceanographic research vessels which carry a scientific team, and offshore supply vessels which may carry a variety of offshore workers.

These "special personnel" are neither crew members, nor passengers. The regulations proposed in this notice would classify oceanographic research vessels and offshore supply vessels as special purpose ships for the purpose of establishing requirements for lifesaving systems. The IMO Code for Special Purpose Ships has not been widely used in the United States. The code is intended for vessels of 500 tons gross tonnage and above. In the United States, 46 U.S.C. 2101(19) limits the term "offshore supply vessel" to vessels "of more than 15 gross tons but less than 500 gross tons", but for lifesaving purposes, the Code for Special Purpose Ships gives reasonable guidelines for vessels of this type.

As in the IMO Code for Special Purpose Ships, proposed § 199.405 would require these vessels to meet lifesaving system requirements for cargo vessels if they carry not more than 50 special personnel. If they carry more than 50 special personnel, they would be required to meet the lifesaving system requirements for passenger vessels. The proposed regulations would apply to all inspected oceanographic vessels including nonself-propelled vessels under 300 tons gross tonnage, presently exempted under 46 CFR 192.01–1(b) from all lifesaving equipment requirements except life preservers.

Under proposed § 199.505, public nautical school ships and civilian nautical school ships that meet the structural fire protection requirements for passenger vessel of the same size and service would be required to meet the lifesaving requirements for passenger vessels. Other nautical school ships would be required to meet the lifesaving requirements for cargo vessels.

Additional Requirements for Mobile Offshore Drilling Units

Mobile Offshore Drilling Units (MODUs) would be required to meet the same general lifesaving system requirements as any ocean service vessel, but a MODU may be one of several radically different types, most very different from conventional vessels. U.S. registered MODUs may operate in virtually any marine oil-producing area in the world. For these reasons, most MODUs need lifesaving systems that differ from either the cargo vessel or passenger vessel classifications that are used for other types of vessels. One comment on the ANPRM suggested that the regulations should be subdivided into separate requirements for the varying types of MODUs. As explained in the following paragraphs, the regulations proposed in this notice do recognize the essential differences between types of MODUs and provide for appropriate requirements for each. As stated in some of the preceding discussions, the proposals in this notice for MODUs are based in part on a draft revision to the IMO Code for the Construction and Operation of Mobile Offshore Drilling Units (MODU Code) now under consideration by the members of IMO. This draft appears in various annexes to IMO paper "DE 30/14", of June 16, 1987. The draft revisions were prepared with the active participation of the United States. Various oil companies and drilling contractors based in the United States also participated in the development of the draft code through U.S. delegation working group meetings, and also at IMO through various international observer organizations. The IMO paper may be requested from the IMO at the address provided in the **ADDRESSES** section at the beginning of this notice, or from the Coast Guard contact listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

a. A drillship is the one classification of MODU that is similar to a conventional vessel in many respects. Proposed § 199.600(c) would require a drillship to meet the same lifesaving system requirements as an oil tanker.

b. Under proposed § 199.605(a)(1), aluminum lifeboats would not be permitted to be used on MODUs. Proposed § 199.650(f) would prohibit aluminum launching appliances. This issue is discussed under the section of this notice titled "Additional Requirements for Tank Vessels".

c. The present regulations require totally enclosed lifeboats for 100% of the persons on board. Survival craft for an additional 100% capacity are also required in case the lifeboats can not be used. These additional survival craft can be either lifeboats or davit-launched inflatable liferafts. These requirements are based on assumptions similar to those made for conventional cargo ships that have two sides and need 100% capacity available on both sides in case the survival craft on one side can not be used. As stated above, many MODUs are very different from conventional vessels. They may have three, four, or even five sides. Their decks are often far above the water, and the area under the deck is usually open. For these reasons, the requirements for MODU lifesaving systems need to be developed considering the special characteristics of these vessels. The requirements for the number and arrangement of lifeboats and liferafts on MODUs would be completely revised under proposed § 199.605(b). Totally enclosed fire-protected lifeboats would be required in at least two widely separated locations on different sides of the MODU. The arrangement of the lifeboats would have to provide sufficient capacity to accommodate the total number of persons on board if either all the lifeboats in any one location are lost; or all the lifeboats on any one side of the MODU are lost or rendered unusable. For many MODUs with davit-launched survival craft in two separate locations, this requirement would result in an arrangement similar to the present regulations. For larger units with three or more separate survival craft locations on different sides, it would result in a reduction of the total number of davit-launched survival craft as compared to present regulations.

d. The present regulations in 46 CFR 108.503(a) allow a MODU permitted to carry 30 persons or less to have only one lifeboat. One comment suggested that at least two lifeboats be required on all MODUs, and that existing MODUs be given 2 years to comply. The regulations proposed in this notice require at least two lifeboats on all new MODUs as suggested by the comment, but under proposed § 199.10(e), existing MODUs would be permitted to retain their present arrangement. No retrofit requirement has been proposed because most of these small units could not be retrofitted without extensive modification. New units of this size can be more economically designed to accommodate two lifeboats in separate locations, although § 199.605(c) would provide an alternative for certain (usually small) self-elevating units which could not comply with the proposed requirements.

e. Present regulations allow the use of either davit-launched inflatable liferafts or totally enclosed lifeboats for the second 100% survival craft capacity. Davit-launched liferafts were developed originally for conventional vessels where they could be launched down the straight side of the hull. The open structure of MODUs makes davit-launched liferafts especially susceptible to damage due to being driven into structural members by wind and waves while being lowered. We are not aware of any MODU casualty where abandonment by davit-launched liferaft has been attempted. Totally enclosed lifeboats would be required under the proposed regulations for the first 100% survival craft capacity as well as for the additional survival craft needed to meet the requirement discussed in preceding paragraph (c.). Davit-launched liferafts would no longer be permitted to meet

the survival craft requirement on new MODUs, although under proposed § 199.15(b), they could be retained on MODUs already equipped with them. They could also be used on certain self-elevating units under § 199.605(c). In addition to the lifeboats, the regulations in proposed § 199.605(b) would require float-free liferafts with an aggregate capacity that will accommodate the total number of persons on board. These liferafts would be available for use in case the MODU is lost before the davit-launched survival craft are launched.

(1) Three comments on the ANPRM suggested that davit-launched liferafts were unsuitable for use on MODUs. One of the comments stated they were unnecessary because most newly constructed rigs were being built with 200% lifeboats. Another stated "the industry's general opinion is that davit-launched inflatable liferafts have proven to be expensive, ineffective and a maintenance nightmare, especially for units operating in remote locations. Such liferafts are a secondary, or backup, means of escape which has never gained the confidence of personnel serving on MODUs." The regulations proposed in this notice are consistent with these comments.

(2) One comment stated that the present davit-launched liferafts should be continued to be accepted in place of the float-free liferafts on existing MODUs. As explained in the preceding paragraph, the proposed regulations provide for continued acceptance of davit-launched liferafts on existing MODUs.

f. Proposed § 199.650(d) would require lifeboats on MODUs (other than drillships) to be arranged to clear each leg, column, footing, brace, mat, and each similar structure below the hull of a self-elevating unit and below the upper hull of a column stabilized unit, with the unit in an intact condition. A reduction in the total number of survival craft meeting this requirement would be allowed when the unit is in the transit mode and the number of personnel on board is reduced. The ANPRM discussed requiring survival craft to clear MODU structures by at least 5 m (16.5 ft.) when the survival craft is launched with the MODU on even keel. The ANPRM also discussed requiring survival craft to clear the same structures with the unit listed and trimmed at angles up to 20°. The purpose would have been to reduce the possibility that the survival craft would be damaged by collision with the lower structure of the MODU as they are launched.

(1) Two comments expressed concern about the 5 m clearance requirement proposed in the ANPRM. They pointed out the disadvantages of a long cantilevered structure that would be necessary to get the lifeboat 5 m away from the hull, including structural problems and the danger crew members would face on such a structure in bad weather. The regulation proposed in this notice does not specify any minimum clearance. It follows the proposed IMO MODU Code revision in requiring that all survival craft clear the structure of the MODU in the upright, intact condition. Under damaged conditions, an aggregate survival craft capacity to accommodate the total number of persons permitted on board would be required to be capable of being launched safely, and clear of any obstruction. This is a more performance-oriented requirement than the 5 m clearance requirement discussed in the ANPRM. Under the requirement proposed in this notice, MODUs should be able to provide for adequate launching, and avoid the necessity of the cantilevered structures discussed in the comments.

(2) One comment noted that a new system (designated the PROD system) is under development that would hold the lifeboat pointed away from the unit and would prevent it from contacting the structure. The comment suggested that the 5 m clearance requirement would not be needed if such a system were used. The PROD system, or similar systems would be acceptable under the rules proposed in this notice.

(3) One comment pointed out that some units are limited by design to angles of less than 20°, and that lifeboats would be underwater in some cases at 20°. The rules proposed in this notice require operation of launching appliances based on list and trim derived from the damage stability characteristic of the unit, rather than requirements based on list and trim of 20°.

(4) Another comment supported the present regulations in 46 CFR 108.506 (a) and (b), and stated there was nothing in the various reports on the OCEAN RANGER that constituted a basis for changing the present requirements. The regulations in § 108.506(a) on a surface type unit require launching at a list of 15° and a trim of 10°. Under the rules proposed in this notice, surface type units would have to meet the same lifesaving requirements as a tank vessel. Launching equipment built to meet SOLAS 74/83 will be designed to operate on these MODUs as well as on conventional SOLAS 74/83 vessels, and there should be no difficulty meeting the requirement. For other MODUs, § 108.506(b) requires the adverse list and trim to be determined by the characteristics of the unit. The comment stated that this requirement was appropriate and flexible. The rules proposed in this notice require operation of launching appliances based on list and trim derived from the damage stability characteristics of the unit. Contrary to the statement in the comment about there being no basis for changing the requirement, the abandonment of the OCEAN RANGER was evidently attempted with the unit listing well beyond the 12° list at which the lifeboats would clear the structure. Another casualty to the Norwegian semi-submersible ALEXANDER L. KIELLAND resulted in an attempt to abandon the unit in the lifeboats at a list of about 30°! We are not aware of any practical way to achieve clearance at angles beyond 20° for conventionally designed semi-submersibles, with the possible exception of free-fall lifeboats. Further comments are invited on this matter.

g. Proposed § 199.650(e) would require lifeboats with an aggregate capacity that will accommodate the total number of persons permitted on board to be capable of being launched safely, and clear of any obstruction in any damaged condition under 46 CFR 174, Subpart C. The ANPRM discussed consideration of a requirement for lifeboats to be launched into the water heading away from the unit. This would enable the boats to apply power immediately in the direction away from the unit. A boat launched broadside on the weather side of a MODU in distress would be driven farther into or under the unit during the time it takes to turn it away. This is a particular hazard on column stabilized MODUs that have large structures near water level. It would also be a hazard on self-elevating units where the lifeboats are installed adjacent to the legs, although the normal lifeboat installation on these units is between the legs. The proposed regulation would require that these potential problems be considered in the orientation of the lifeboats, but would not necessarily require them to be oriented in a direction headed away from the unit.

(1) One comment stated that orienting the lifeboats headed away from the unit could be a hazard on semi-submersible units where the lifeboats are mounted on the side of the unit. The comment pointed out that a semi-submersible is normally oriented with its bow toward prevailing wind and waves, so that a lifeboat launched on the side of the unit and headed away from it, would be broadside to the weather. The comment was not taken into account in preparing the proposed rule since the weather at

the time of abandonment may not be coming from the direction of the prevailing wind and waves at the site. Furthermore, the lifeboats are required to be self-righting, so if they are launched broadside and capsize, they will automatically reright. We consider the hazard presented by collision with the structure of the MODU to be greater that the hazard presented by being launched broadside to the waves. Nevertheless, the regulation proposed in this notice would not specifically require the lifeboats to be oriented in a direction headed away from the unit.

(2) Two comments opposed a requirement for the lifeboats on self-elevating MODUs to be launched in a direction headed away from the unit. The comments noted that lifeboats on self-elevating MODUs are usually installed between the legs and are therefore not normally at hazard from a collision with them. We agree with the comments, and the proposed regulation would not require a lifeboat to be launched headed away from a self-elevating MODU.

Initial Inspections and Tests

The initial inspections and tests are those that are conducted whenever new lifesaving equipment is installed on board a vessel. A number of revisions and additions are proposed in this notice for these inspections and tests. These proposed tests and inspections appear in proposed § 31.01–5(c) for tank vessels, § 71.20–20(a)(1) for passenger vessels, and § 91.20–20(a)(1) for cargo vessels. One or more of those sections are cross-referenced in § 107.231(y) for MODUs, § 167.15–27(a) for public nautical school ships, and § 189.20–20(a)(1) for oceanographic research vessels. The requirements for public nautical school ships and for oceanographic research vessels depend upon whether cargo ship lifesaving equipment or passenger ship lifesaving equipment is installed.

a. Installation tests for launching appliances using falls and a winch have been revised to be consistent with SOLAS 74/83 and Part 2 of IMO Resolution A.521(13), "Recommendation on Testing of Lifesaving Appliances".

b. Tests for davit-launched liferaft launching equipment and rescue boat launching equipment are proposed in addition to tests for lifeboat launching equipment.

c. Installation tests have been added for free-fall lifeboats.

d. A two-hour operational test has been added for lifeboats and rescue boats. Although not in the present regulations, a similar test is often done to make sure that the boat is operating properly before it is installed on the vessel, and that the boat has not been damaged in transportation to the shipyard. This test should be conducted on all lifeboats and rescue boats as part of the installation test procedure.

e. A requirement for an abandon-ship simulation has been added to make sure the survival system is suitable for abandonment in 30 minutes for vessels required to meet passenger vessel standards, and 10 minutes for other vessels. This test demonstrates how well the lifesaving equipment works as a survival system on the vessel. This simulation would not be required if a previously tested sister vessel with the same lifesaving equipment had successfully completed the test.

f. Another system test would require a lifeboat and a rescue boat to be launched with the vessel proceeding at 5 knots. This test will also verify the manufacturer's instructions for launching the boat with the vessel underway. This test would probably be conducted during sea trials.

Inspections for Certification

The inspections for certification are conducted whenever the vessel renews its certificate of inspection. A number of revisions and additions are proposed in this notice for these inspections. These proposed revisions and additions appear in § 31.10–15(d) for tank vessels, § 71.25–15 for passenger vessels, § 91.25–15 for cargo vessels, and § 107.239 for MODUs. One or more of those sections are cross-referenced in § 167.15–28(b) for public nautical school ships, and § 189.25–15 for oceanographic research vessels. The requirements for public nautical school ships and for oceanographic research vessels depend upon whether cargo ship lifesaving equipment or passenger ship lifesaving equipment is installed. These tests are similar to some of the tests conducted under the initial inspection for certification, but they are intended to establish that the lifesaving equipment is still in good and serviceable condition. The primary revisions and additions to the inspections for certification are:

a. Load testing would be required for rescue boat and liferaft launching devices, in addition to the present requirement to test lifeboat launching equipment.

b. Testing of free-fall lifeboat launching equipment would be required.

c. Tests of the air supply and water spray systems would be required for totally enclosed lifeboats equipped with them.

d. Inspectors would not stamp lifejackets, immersion suits, and work vests with the present "INSPECTED AND PASSED" stamp unless the inspectors determined that it was necessary. Stamping might be necessary when a large number of devices must be inspected, or in other cases where confusion might arise over which devices have been inspected, and which have not.

e. An abandon-ship drill would be required to determine that the equipment is in working order, and that the crew has been appropriately trained in its use.

Miscellaneous Revisions

a. The existing regulations for tank vessels require ship's distress signals and line throwing appliance to be carried in a portable magazine chest in the vicinity of the bridge. Regulations for other vessels require a portable watertight container that can be carried on the bridge or inside the pilothouse. Proposed §§ 199.68(d) and 199.170(e) would allow the use of either method of stowage on all vessels.

b. The Lyle gun has been removed from the regulations as an acceptable line throwing apparatus. There are few, if any, Lyle guns still in service.

c. Proposed § 199.70(a)(2) would revise the requirement for the lines secured to ring lifebuoys in order to be consistent with SOLAS 74/83. The existing requirements are for a line 15 fathoms (90 ft.) long. The line must be buoyant on vessels on an international voyage. The proposed regulation requires all lines to be buoyant, and to be at least as long as twice the height where the buoy is stowed above the waterline, or 30 m (100 ft.), whichever is the greater. Additional requirements for the diameter, strength, and ultraviolet resistance are also proposed.

d. Proposed § 199.72(a) would require lifejackets on vessels in international voyage, short international voyage, or coastwise services, to meet Regulations III/30.2 and III/32.1 of SOLAS 74/83. Vessels in other services could continue to use lifejackets of the type currently approved by the Commandant as "life preservers". The "SOLAS" lifejackets must float wearers slightly higher in the water, therefore they have more buoyancy than "life preservers". The SOLAS lifejackets are also more bulky and slightly more expensive than life preservers. The current life preserver is considered suitable for continued use in Great Lakes; lakes, bays and sounds; and river services.

e. Present regulations for passenger vessels require "an approved life preserver for each person carried and in addition, * * * a number of life preservers suitable for children equal to

at least 10 percent of the persons carried" (46 CFR 75.40–10(a)). The Coast Guard interprets this regulation as requiring a child-size life preserver for each child carried, even if more than 10% of the persons on board are children. Other vessels are required to carry a "suitable number of children's life preservers", "when children are carried" (46 CFR 94.40–10(c)). Proposed § 199.72(a)(1)(i) would require all vessels carrying passengers to carry a number of child-size lifejackets equal to at least 10% of the number of passengers permitted on board, or such greater number as necessary to provide a lifejacket for each person smaller than the lower size limit of the adult lifejackets. This proposed regulation would state the requirement for child-size life preservers more clearly than in the present regulations for passenger vessels. This proposed requirement is the same as Regulation III/7.2.1.1 of SOLAS 74/83 and means that any vessel permitted to carry passengers would have to carry child-size lifejackets. Proposed § 199.72(b)(2) would permit vessels not under SOLAS 74/83 to omit the child-size lifejackets if children are never among the passengers carried. This regulation means that child-size lifejackets well in excess of 10% of the total number of passengers permitted on board, may be required for a vessel that carries a large number of children on infrequent occasions, or for a vessel that carries large numbers of passengers over short distances and does not normally control the number of children carried.

(1) One comment called the requirement for children's lifejackets reasonable. Another stated total opposition noting that a child can use an adult lifejacket. The comment also pointed out that in his particular operation, stowage space was minimal, a lifejacket has never been needed, all operations are close to the river bank, and the water is not deep enough to submerge the vessel. A third comment also cited a lack of stowage space as a problem. These last two comments regard the proposed regulation for children's lifejackets as a change from the present requirements. The proposed regulation is only a clarification of present requirements for passenger vessels. The only vessels that will have a revision in their requirements are cargo vessels that also carry passengers. Most of these vessels will have to have a minimum number of child-size lifejackets equal to 10% of the passengers permitted to be carried. We understand the problems of passenger vessel operators, but can not agree that adult lifejackets can necessarily be used for any and all children. If the lifejacket is too big for a child, it may come off easily, or its buoyancy may be too low on the child's body causing the child to float with the head under water. The Coast Guard has worked on the problem by testing some adult lifejackets on children. Some were found to be satisfactory for children over 75 lb. Recognizing that future "adult universal" size lifejackets may be approved for persons smaller than 90 lb., the regulations proposed in this notice refer to the lower size limit of the lifejacket.

(2) Comments on the issue of lifejackets for children are invited. Comments suggesting alternative approaches should consider the need to provide appropriate flotation devices for all children carried, as well as the problems that are experienced by operators in complying with the requirement.

f. Proposed § 199.75 would require each lifejacket and immersion suit carried on a vessel engaged in ocean, short international voyage, coastwise, or Great Lakes service, to have a lifejacket light, similar to existing regulations. Vessels in ocean service would be required to have lights meeting Regulation III/32.3 of SOLAS 74/83. Other vessels would be required to have lifejacket lights meeting the present 46 CFR 161.012. The "SOLAS" light would have to meet a brightness requirement after 8 hours of operation. The lights now approved under 46 CFR 161.012 have an initial brightness similar to the SOLAS light, but they are not required to be as bright at the end of 8 hours of operation. A battery-powered SOLAS light will therefore be slightly larger and more expensive than a comparable 46 CFR 161.012 light. Normally, the Coast Guard would propose to revise the existing specification regulation to bring all lights up to the SOLAS 74/83 standard, but in this case, the lights approved under 46 CFR 161.012 include a "chemiluminescent" light that can not practically be modified to meet the SOLAS 74/83 requirements. This light does not meet the SOLAS 74/83 brightness requirement after 8 hours. When it is cold, the chemical reaction is slowed so that the light is dimmer, but lasts much longer. This light has proven to be popular with vessel operators, and it is apparently more inherently reliable than other approved lights which are all battery powered. Therefore, lights approved under 46 CFR 161.012 are proposed to be acceptable for domestic services, in the belief that the higher reliability available with these devices is a worthwhile tradeoff for their slightly lower operational effectiveness.

g. Proposed § 199.80 contains more detail on the contents of the station bill than present regulations. This was done to meet the requirements of Regulation III/8 of SOLAS 74/83, and also to cover additional necessary items. The Coast Guard used to provide the form CG–848 series to vessel operators as station bills, but these forms have been discontinued. The proposed section therefore contains more descriptive information on the content of the station bill. Proposed § 199.80 would also apply to all cargo vessels and tank vessels over 500 tons gross tonnage, so for the first time, a station bill would be required on large barges covered by these rules. Currently, the Coast Guard is involved in developing an ASTM consensus standard under committee F 25.07, General Support Requirements, for locating and preparing station bills. Its text corresponds to the proposed requirement. Should this standard be adopted by ASTM prior to publication of the final rule, the ASTM standard could be incorporated by reference, in place of the text in proposed § 199.80.

h. Proposed § 199.90 contains requirements for posted operating instructions for survival craft and their launching controls, as required under Regulation III/9 of SOLAS 74/83. Currently, the Coast Guard is involved in developing an ASTM consensus standard under committee F 25.07, General Support Requirements, for location and instruction symbols for evacuation and lifesaving equipment. Its text corresponds to the proposed requirement. Should this standard be adopted by ASTM prior to publication of the final rule, the ASTM standard could be incorporated by reference, in place of the reference to IMO Resolution A.603(15).

i. Present regulations require winches for gravity davits to have a fleet angle not exceeding 8°, and no more than a single wrap of wire rope on the drum. Other types of davits may have more than one layer of wrap. The purpose of the single wrap on gravity davit winch drums is to prevent the wire from winding unevenly onto the drum when the survival craft is recovered. Uneven winding could cause separate falls to wind onto the drum at different speeds, or cause fouling of the wire on the drum. The requirements for gravity davit winches in proposed § 199.153(f) and (g) would be less restrictive. Two layers of wire rope would be permitted on the drum, provided the fleet angle does not exceed 4°. A fleet angle of 4° or less should not result in uneven winding.

therefore, a second layer of wire can be permitted. This should provide manufacturers with more design flexibility.

j. Proposed §§ 199.211 and 199.271 would slightly revise the requirements for the numbers of ring life buoys required to be carried. Most of the changes result from changing break points based on vessel length in feet to points based on length in meters. The changes would make the requirements for vessels in ocean and short international voyage service consistent with Regulations III/21 and III/27 of SOLAS 74/83. Proposed requirements for other vessels are similar to existing regulations. The following tables show only the changes that would occur as a result of the rules proposed in this notice. Vessels in size ranges not shown on the tables would not be affected.

PASSENGER VESSELS, OCEAN AND SHORT INTERNATIONAL VOYAGE

Length of vessel in feet	No. of ring life buoys (proposed in this NPRM)	No. of ring life buoys (existing regulations)
196 ft.–300 ft.	12	8
393 ft.–400 ft.	18	12
590 ft.–600 ft.	24	18
787 ft.–800 ft.	30	24

CARGO AND TANK VESSELS, OCEAN VOYAGE

Length of vessel in feet	No. of ring life buoys (proposed in this NPRM)	No. of ring life buoys (existing regulations)
98 ft.–100 ft.	4	3
100 ft.–196 ft.	4	6
200 ft.–300 ft.	6	8
300 ft.–328 ft.	6	12
400 ft.–492 ft.	12	18
600 ft.–656 ft.	18	24
800 ft.–820 ft.	24	30

PASSENGER VESSELS OTHER THAN OCEAN AND SHORT INTERNATIONAL VOYAGE

Length of vessel in feet	No. of ring life buoys (proposed in this NPRM)	No. of ring life buoys (existing regulations)
Under 98 ft.	3	2
98 ft.–100 ft.	4	2
196 ft.–200 ft.	6	4
297 ft.–300 ft.	12	6
590 ft.–600 ft.	24	18
787 ft.–800 ft.	30	24

CARGO AND TANK VESSELS OTHER THAN OCEAN VOYAGE

Length of vessel in feet	No. of ring life buoys (proposed in this NPRM)	No. of ring life buoys (existing regulations)
98 ft.–100 ft.	3	2
196 ft.–200 ft.	6	4
300 ft.–328 ft.	6	12
400 ft.–492 ft.	12	18
600 ft.–656 ft.	18	24
800 ft.–820 ft.	24	30

k. Emergency signals are listed in proposed § 35.10–5 for tank vessels, § 78.13–1 for passenger vessels, § 97.13–1 for cargo and miscellaneous vessels, and § 109.503 for MODUs. Under proposed § 167.35–5 for public nautical school vessels, and § 196.13–1 for oceanographic research vessels, emergency signal requirements are those required for either passenger vessels or cargo vessels, depending upon the lifesaving equipment installed. The requirements specify what each signal must be, except for a man-overboard signal and an abandon-ship signal which must be established for each vessel and listed on the station bill. This notice does not attempt to resolve the differences that exist for emergency signals on different types of vessels. For instance, on MODUs, the signal to man the abandon unit stations is a continuous sounding of the general alarm and the whistle. On other vessels, the continuous signal is for fire and emergency stations. On MODUs, the signal for emergency stations is a rapid succession of short soundings, while a rapid sucession of short soundings followed by a long sounding is the signal for boat stations on other vessels. Comments are specifically requested as to the need for establishing uniform signals for these commands, and what those signals should be. Comments should address whether or not a separate abandon-ship signal is required in addition to the signals to go to boat stations (six short blasts, one long), and to lower boats or rafts (one short). We are aware of at least two different signals in common use for man overboard (five short blasts, and also four sequences of three long blasts each).

l. Proposed requirements for manning and supervision of lifeboats and liferafts are in § 35.11–5 for tank vessels, § 78.14–5 for passenger vessels, § 97.14–5 for cargo and miscellaneous vessels, and § 109.323 for MODUs. Under proposed § 167.35–10 for public nautical school vessels, and § 196.14–1 for oceanographic research vessels, manning and supervision requirements are those required for either passenger vessels or cargo vessels, depending upon the lifesaving equipment installed. The number of certificated lifeboatmen (including deck officers and able seamen) required for a lifeboat in the present regulations is based on the size of the lifeboat. Only one is required in a liferaft. The proposed regulations would require a minimum of one certificated person for each survival craft, and a sufficient number of trained and certificated persons for the various tasks involved in abandoning the vessel. A second certificated person would be required for each lifeboat on vessels in ocean service, and for each lifeboat permitted to carry more than 40 persons on all vessels except those in river service. Each vessel that carries passengers and is not in river service would have to have at least one certificated person for every 20 passengers assigned to each lifeboat. On certain passenger vessels, persons "practiced in the handling and operation of liferafts" could be permitted to be placed in charge of liferafts instead of certificated persons. This is based on a similar provision in Regulation III/10.4 of SOLAS 74/83.

m. Under existing regulations, a lifeboat must be marked and equipped for the number of persons for which it is approved. Often lifeboats are larger than necessary to accommodate the number of persons assigned to them on the vessel. If the vessel owner wants to equip the lifeboat for a smaller number of persons, the lifeboat must be recertified for the smaller number, and a new recertification plate attached to the boat. The marking requirements for lifeboats proposed in this notice would simplify the procedure. The number of persons capacity painted on the lifeboat would determine the number of persons the boat must be equipped for. This number would have to be equal to or less than the number the boat was originally approved for. The proposed regulations are in § 35.40–40(b)(2) for tank vessels, § 78.47–60(b)(2) for passenger vessels, § 97.37–37(b)(2) for cargo and miscellaneous vessels, § 108.645(b)(2) for MODUs, and § 196.37–37(b)(2) for oceanographic research vessels. Under proposed § 167.55–5(j), public nautical school vessels would have to meet the marking requirements in the passenger vessel regulations.

Additional Requirements for Existing Vessels

The inspection and operational requirements proposed in this notice

generally apply to all vessels, but most major equipment requirements would apply immediately only to vessels constructed on or after July 1, 1986. The major equipment exemption for existing vessels (those built before July 1, 1986) is in proposed § 199.10(e). Proposed § 199.15(a) establishes the basic requirements for an existing vessel as those requirements in effect for the vessel on June 30, 1986. Section 199.15 also contains the proposed requirements to "phase-in" certain equipment requirements on existing vessels. These are:

a. When any lifesaving equipment is replaced on a vessel or added to it, the equipment would generally be required to meet the new requirements (§ 199.15(b)). An exception to this requirement would be allowed for a survival craft replaced without replacing its davit and winch, or vice versa.

b. On or before July 1, 1991, each vessel in ocean, short international voyage, or coastwise service, would be required to have survival craft portable two-way radiotelephone equipment (§ 199.15(c)).

(1) Under Regulation III/1.6 of SOLAS 74/83, vessels with SOLAS Safety Certificates would have to have this equipment not later than July 1, 1991.

(2) The requirement would also apply to existing vessels in coastwise service, even though SOLAS 74/83 does not apply to these vessels.

c. On or before July 1, 1991, each passenger vessel in ocean, short international voyage, coastwise, and Great Lakes service, would be required to have at least three immersion suits for the crew of each lifeboat. A thermal protective aid would be required for each other person on board. An exemption from the requirement would be allowed for vessels operating only on routes between 32° N and 32° S latitude (§ 199.15(d)).

(1) This requirement would also apply to other vessels that would be required to meet the passenger vessel lifesaving equipment requirements, including nautical school ships, oceanographic research vessels carrying more than 50 scientific personnel, and offshore supply vessels carrying more than 50 offshore workers.

(2) Under Regulation III/1.6 of SOLAS 74/83, vessels with SOLAS Safety Certificates would have to have this equipment not later than July 1, 1991.

(3) The requirement would also apply to existing vessels in coastwise and Great Lakes service, even though SOLAS 74/83 does not apply to these vessels.

(4) The proposed requirement is based on Regulation III/21.4 of SOLAS 74/83, which includes an exemption from the immersion suit requirement for vessels with totally or partially enclosed lifeboats in paragraph 4.2.1. The proposed regulations in this notice do not include such an exemption because it is not permitted by statute (46 U.S.C. 3102(a)).

d. On or before July 1, 1991, each cargo vessel and tank vessel in ocean or coastwise service would be required to have liferafts for 100% of the persons on board the vessel in addition to the lifeboats, rather than the present 50% (§ 199.15(e)).

(1) This requirement would also apply to other vessels that would be required to meet the cargo vessel lifesaving equipment requirements and that do not substitute liferafts for lifeboats. This category could include oceanographic research vessels carrying not more than 50 scientific personnel, and offshore supply vessels carrying not more than 50 offshore workers.

(2) Under Regulation III/1.6 of SOLAS 74/83, vessels with SOLAS Safety Certificates would have to have these extra liferafts not later than July 1, 1991.

(3) The requirement would also apply to existing vessels in coastwise service, even though SOLAS 74/83 does not apply to these vessels.

e. On or before July 1, 1991, each vessel would have to have openings in rails or bulwarks for launching liferafts or inflatable buoyant apparatus (§ 199.15(f)).

f. On or before July 1, 1991, each set of lifeboat davits on a cargo vessel or tank vessel in ocean, coastwise, or Great Lakes service, would be required to be gravity type davits (§ 199.15(g)).

(1) This requirement would also apply to other vessels that would be required to meet the cargo vessel lifesaving equipment requirements and that do not substitute liferafts for lifeboats. This category could include oceanographic research vessels carrying not more than 50 scientific personnel, and offshore supply vessels carrying not more than 50 offshore workers.

(2) This proposed requirement arises from the Coast Guard investigation of the capsizing and sinking of the SS MARINE ELECTRIC in February, 1983. The Marine Board of Investigation found launching a lifeboat under the adverse conditions the MARINE ELECTRIC encountered to be much more difficult to perform with quadrantal davits than with gravity davits. The board recommended "that all vessels currently fitted with quadrantal davits be required to install gravity davits for the launching of their lifeboats." The Commandant of the Coast Guard stated in concurring with this recommendation, "The Coast Guard will propose that inspected cargo and tank vessels in ocean and coastwise service, equipped with mechanical davits of any type, be fitted with enclosed lifeboats and launching systems that meet SOLAS 74/83 no later than July 1, 1991." (See the discussion that follows in section (g) on retrofit proposals for enclosed lifeboats.)

(3) The proposed retrofit requirement for gravity davits does not apply to vessels limited to river, or lakes, bays, and sounds service, where the severe conditions encountered by the MARINE ELECTRIC are not likely to be found. It does, however, extend to vessels in Great Lakes service since very severe sea conditions can prevail in those waters. Four casualties on the Great Lakes in the past 30 years illustrate the need for replacement of mechanical davits. In the case of the SS CARL D. BRADLEY which sank on Lake Michigan in 1958, the lifeboat was in the process of being launched when the vessel sank. The SS *Cedarville* sank in the straits of Mackinac in 1965 after a collision. Both lifeboats were in the process of being lowered when the vessel capsized and sank. There were no survivors from the stern section of the SS DANIEL J. MORRELL which broke up and sank in Lake Huron in 1966, so it is not known if the process of launching either of the lifeboats had begun. There were approximately eight minutes available to abandon ship which would have been enough time to launch a totally enclosed lifeboat with a modern gravity davit. The crew of the SS EDMUND FITZGERALD may not have had time to even attempt to launch the lifeboats when the vessel sank in Lake Superior in 1975, but testimony taken by the Coast Guard Marine Board of Investigation indicated that former crewmembers doubted that the lifeboats could have been launched in severe weather.

(4) Although the evidence from the MARINE ELECTRIC casualty is the primary justification for the gravity davit retrofit requirement, the casualty record indicates that there have been problems with launching of lifeboats from mechanical davits in other casualties. In addition to those discussed in the preceding paragraph, these other casualties include the SS BUNKER HILL which exploded on March 6, 1964, and the M/V CHESTER A. POLING which sank on January 10, 1977.

(5) The proposed gravity davit retrofit requirement is consistent with a recommendation made by the National Transportation Safety Board (NTSB) in its report on the collision of the U.S.

Coast Guard Cutter BLACKTHORN, and the tankship CAPRICORN on January 28, 1980. NTSB was concerned not with the capability to abandon ship, but with the difficulty the CAPRICORN had in launching one of its lifeboats to assist the crew of the sunken BLACKTHORN. In recommending that U.S. merchant vessels over 1,600 gross tons be equipped with gravity davits, NTSB stated that the accident illustrated "the delays in launching lifeboats using sheath-screw type davits." The report goes on to say, "the Safety Board does not believe that outdated lifesaving equipment should be permitted to remain in service indefinitely. The Coast Guard should establish a service life after which all lifesaving equipment on U.S. merchant vessels should be upgraded to meet current vessel standards." This is, in effect, what this proposed retrofit requirement and the enclosed lifeboat retrofit requirement, covered in the discussion that follows in section (g) would do.

(6) Two identical comments suggested that the Coast Guard go slow on retrofit requirements since new equipment will not result in fail-safe systems. Another comment stated that the retrofit requirements would be too costly for existing vessels. The retrofit requirements proposed in this notice take the concerns expressed in these comments into account. We are not proposing that all launching systems be replaced with the higher-performing systems in SOLAS 74/83. This proposal would result in the replacement of only the most antiquated launching systems that do not have gravity davits. The requirement to retrofit totally enclosed lifeboats, discussed in following section (g.), would extend over many years. This would allow the boats to be replaced whenever existing boats are no longer serviceable, or in need of extensive repairs.

g. On or before July 1, 2001, each lifeboat on a cargo vessel or tank vessel in ocean, coastwise, or Great Lakes service, would be required to be a totally enclosed lifeboat (§ 199.15(h)).

(1) This requirement would also apply to other vessels that would be required to meet the cargo vessel lifesaving equipment requirements and that do not substitute liferafts for lifeboats. This category could include oceanographic research vessels carrying not more than 50 scientific personnel, and offshore supply vessels carrying not more than 50 offshore workers.

(2) This proposed requirement also arises from the Coast Guard investigation of the capsizing and sinking of the SS MARINE ELECTRIC in February, 1983. In considering the difficulties involved in launching the lifeboat, the Commandant of the Coast Guard stated, "the Coast Guard will propose that all existing inspected cargo and tank vessels in ocean and coastwise voyages, presently equipped with open lifeboats and gravity davits, be fitted with enclosed lifeboats and launching systems that meet SOLAS 74/83 no later than July 1, 2001."

(3) In combination with the proposed requirement for launching appliances discussed in preceding section (f.), this proposed requirement would make sure that antiquated lifesaving equipment is not perpetuated on vessels that will continue in service well into the 21st century. It is also consistent with the NTSB recommendation discussed in paragraph (e.)(5) to establish a service life after which all lifesaving equipment on U.S. merchant vessels should be upgraded to meet current vessel standards. On the other hand, the period provided for compliance will permit vessel operators to complete the retrofit at a time that is most economical to do so. Many existing vessels will undergo an extensive overhaul, repair, or refitting in a shipyard within this time period, which would be a good time to complete this work. Others will have to replace lifeboats due to damage, loss at sea, or deterioration. For those vessels, the cost of the proposed requirement would be limited to the difference in cost between an open lifeboat and an enclosed lifeboat. Other vessels will undoubtedly wait until the deadline to complete the retrofit.

(4) The ten-year difference between the proposed 1991 deadline to meet the gravity davit requirement, and the 2001 deadline to meet the totally enclosed lifeboat requirement will allow owners of vessels with a limited remaining service life in 1991 to rectify the launching problems on a vessel with mechanical davits, without going to the expense of replacing the lifeboat. Other vessels affected by the proposed gravity davit requirement, that have a service life projected beyond 2001, will probably fit the totally enclosed lifeboat at the same time as the new davit, as anticipated in the Commandant's response to the MARINE ELECTRIC casualty quoted in paragraph (e.)(2).

(5) One comment suggested that Great Lakes vessels be exempted from a lifeboat retrofit requirement. The proposed retrofit requirement for totally enclosed lifeboats extends to vessels in Great Lakes service since very severe sea conditions and cold water temperature can prevail in those waters. The retrofit requirement is consistent with the recommendations of the Coast Guard Marine Board of Investigation on the sinking of the SS EDMUND FITZGERALD in Lake Superior on November 10, 1975. The board recommended that measures be implemented to improve the entire abandon ship system.

h. The use of aluminum for the hull or canopy would be prohibited for new lifeboats on an oil tanker, chemical tanker or gas carrier (§ 199.15(i)). This is to prevent the boat from being destroyed quickly in a casualty that results in high temperatures for a short period of time in the vicinity of the boat.

i. On or before April 1, 1991, life floats and liferafts which are not davit-launched would not be permitted to be counted toward the requirement for davit-launched liferafts on mobile offshore drilling units, with the exception of submersible MODUs. Each mobile offshore drilling unit would be required either to have lifeboats and liferafts that meet proposed § 199.605(b), or have the combination of totally enclosed fire-protected lifeboats and davit-launched liferafts that meets the present regulations in 46 CFR 108.503 and 108.505 (§ 199.15(j)). Open lifeboats installed on board units prior to January 3, 1979 could be used in place of the davit-launched liferafts.

(1) At the time the Coast Guard first published the regulations for mobile offshore drilling units, it also published Navigation and Vessel Inspection Circular (NVIC) 4–78 covering inspection and certification of units built prior to the effective date of the regulations. NVIC 4–78 allowed existing lifesaving equipment such as open lifeboats, "throwover" liferafts, and life floats, to be used to meet half of the requirement for survival craft to accommodate 200% of the persons on board the unit. Whenever this existing equipment needed extensive repairs, it had to be replaced with either totally enclosed lifeboats or davit-launched liferafts. The proposed regulations would end the acceptance of throwover liferafts and life floats for this purpose. Open lifeboats could continue to be used as long as they are in good working order and do not require extensive repairs.

(2) The April 1, 1991 deadline date was selected after an extended dialog with the International Association of Drilling Contractors on the interpretation of NVIC 4–78. The "existing" throwover liferafts and life floats installed on a unit over 10 years ago should be nearing the end of their useful lives, and this proposed rule would establish a firm deadline for their replacement. In a February 5, 1988 letter to the International Association of

Drilling Contractors, the Coast Guard agreed to consider extension of the deadline for the few units for which this would create a severe hardship. Owners requesting such an extension must address all pertinent safety issues and must provide technical justification for the extension for each MODU. In any case, extensions beyond March 31, 1993 would not be considered.

j. On or before July 1, 1991, each passenger ferry and each other passenger vessel not on ocean, short international voyage, or coastwise service would be required to have sufficient lifeboats, liferafts, and inflatable buoyant apparatus to accommodate everyone on board (§ 199.15(k)). During those periods of the year when the water temperature exceeds 15 °C (59 °F), the number of survival craft on board could be reduced or the number of passengers increased to the point where the vessel has survival craft for 10% of the persons on board.

(1) Most vessels could meet this proposed regulation by carrying inflatable buoyant apparatus. This would provide out-of-the-water support for survivors in the case of a casualty.

(2) The vessels affected by this proposed requirement operate in waters relatively close to shore and now carry only life preservers as survival equipment. One or two small boats are also carried, but these are intended primarily to rescue persons that fall overboard. They can only accommodate a few persons. An accident in cold water that requires those on board to abandon ship would probably result in a number of fatalities due to the cold water alone, if there was no way for survivors to stay out of the water.

k. On or before July 1, 1991, each lifeboat on a vessel would be required to be propelled either by motor or by hand-propelling gear if the lifeboat has a capacity of at least 60 persons, but less than 100 persons. A lifeboat with a capacity of 100 persons or more would be required to be motor propelled (§ 199.15(1)).

Note: Hand-propelled lifeboats are sometimes confused with oar-propelled lifeboats. Oar-propelled lifeboats are maneuvered with oars or sails. Hand-propelled lifeboats are powered by a series of manually-operated levers that drive a propeller through a system of mechanical links and gears.

(1) All new Coast Guard approved lifeboats built since 1965 have been required to meet these requirements, except for hand-propelled lifeboats over 100 persons intended as replacements for previously approved hand-propelled lifeboats. Since 1953, all new lifeboats of at least 60 persons capacity have been required to be either hand-propelled or motor propelled. This proposed regulation would therefore require the upgrading only of larger oar-propelled lifeboats that are 38 years old in 1991, and hand-propelled lifeboats over 100 persons capacity that are, for the most part, 25 years old or older on July 1, 1991.

(2) For lifeboats that are still in serviceable condition, lifeboat manufacturers can provide Coast Guard approved engine or hand-propelling gear retrofits. Complete replacement of a lifeboat in good condition would not be necessary to meet this proposed requirement.

l. SOLAS 74/83 regulations III/1.4.4 and 1.4.5 permit lifesaving equipment installed on existing vessels before July 1, 1991 to not comply fully with the requirements of Chapter III. The regulations proposed in this notice have a similar provision in § 199.15(m).

m. Retroreflective material would be required to be added to lifeboats, rescue boats, and ring life buoys that are not already provided with it by July 1, 1991. Lifejackets and exposure suits are already required to be fitted with retroreflective material. These requirements are in proposed § 35.40–40(e) and § 35.40–50(f) for tank vessels, § 78.47–60(e) and § 78.47–65(f) for passenger vessels, § 97.37–37(e) and § 97.37–43(f) for cargo vessels, § 108.645(e) and § 108.649(f) for MODUs, and § 196.37–37(e) and § 196.37–43(f) for oceanographic research vessels. Marking under the passenger vessel regulations would be required under proposed § 167.55–5 (j) and (n) for public nautical school vessels. All of these proposed regulations reference a draft IMO recommendation on the placement of retroreflective material. The draft is expected to be formally adopted as an IMO resolution in November 1989. Three comments on the ANPRM supported the proposed requirement for retroreflective material.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the docket. It may be inspected or copied at the Office of the Marine Safety Council (see section titled "ADDRESSES").

The draft evaluation estimates a total one-time cost by July 1, 1991 of $22.5 M (million) to comply with the retrofit requirements in the proposed rules. About $10 M of the one-time cost, or about 44%, would be required to retrofit gravity davits and winches on certain cargo and tank vessels which are now equipped with mechanical davits. Just under $5 M or about 22% of the one-time cost, arises from the proposal to require passenger vessels operating in cold waters in domestic services to have survival craft for all persons on board the vessel. This proposal arises in part from Congressional direction in the 1984 Coast Guard Authorization Act which directs the Secretary to proceed vigorously with efforts to improve lifesaving equipment on passenger ferries. Most of the remainder of the costs arise directly from SOLAS 74/83 requirements, such as about $2 M for cargo and tank vessels to double their float-free liferaft capacity to 100% of the persons on board. Two of the largest cost items arise from the new Global Maritime Distress and Safety System (GMDSS), which is expected to be adopted soon as the third set of amendments to SOLAS 1974. Satellite EPIRBs would cost just under $2.5 M. Survival craft radar transponders (SARTs) or their equivalent, would cost about $1.2 M.

The approximate 1991 retrofit cost for a typical passenger vessel in cold water, domestic services is estimated to be approximately $50,000, arising primarily from the requirement to fit survival craft for all persons on board. For the purposes of this estimate, the survival craft selected are assumed to be inflatable buoyant apparatus. An oceangoing passenger vessel would be required to spend an estimated $47,000, primarily for immersion suits and thermal protective aids. An oceangoing cargo or tank vessel would be required to carry additional liferafts, accounting for most of the $9,000 in costs estimated for these vessels. A little over $10 M would be required to retrofit gravity davits and winches on certain cargo and tank vessels which are now equipped with mechanical davits. The average cost for each of the approximately 130 vessels affected is estimated to be $80,000.

Under the proposed rules, cargo and tank vessels still in service on July 1, 2001 and equipped with open lifeboats, would be required to retrofit totally enclosed lifeboats. This would result in an additional one-time cost of $51 M for the estimated 261 vessels that would be affected. The average cost (1988 dollars) for each vessel in ocean or coastwise service affected would be $220,000, and for each vessel in Great Lakes service would be $110,000. This cost may be significantly overstated since an

unknown number of the affected vessels will undoubtedly have to replace or extensively repair their existing open lifeboats sometime before the year 2001. If these lifeboats are replaced at that time with totally enclosed lifeboats, the actual cost of the retrofit requirement would be the difference between the cost of the new lifeboats with installation, and the cost to repair or replace the existing lifeboat.

A recurring annual cost of $7.4 M will result from more extensive on-board training requirements, the additional equipment required on newly constructed vessels, as well as the added maintenance costs for the new equipment. The annual added training and maintenance costs would range from approximately $3,500 for a typical large oceangoing vessel to $757 for an offshore supply vessel operating in the Gulf of Mexico. The approximate added construction cost for typical vessels of selected types are as follows:

MODU (semisubmersible)	$306,925
MODU (jackup)	$226,925
Passenger vessel (ferries, other non-ocean, cold water areas)	$52,540
Passenger vessel (oceangoing)	$81,745
Cargo vessel (ocean, coastwise)	$28,145
Tank vessel (ocean, coastwise)	$50,045
Cargo vessel (Great Lakes)	$14,245
Offshore supply vessel (Gulf of Mexico)	$1,390

Total estimates for the project are $73.8 M total one-time costs spread over the 15 years from 1986 to 2001 (average annual cost $4.9 M), and $7.4 M in recurring annual costs. The year 1986 is considered the base year since SOLAS 74/83 came into force then. U.S. vessels on international voyages had to start complying at that time, even though these implementing regulations were not in place.

The draft evaluation uses a discounting method to determine future costs and benefits. On the basis of this analysis, the evaluation estimates that the regulations would cost approximately $915,666 per life saved. Depending upon the type of vessel, this may vary from as little as $0.4 M per life saved, to as much as $2.8 M per life saved. However, as explained in the regulatory evaluation, the costs and benefits are very difficult to identify accurately, so there is a significant margin for error in these numbers. The minimum accepted value of a human life is $1 M and values considerably above this amount have frequently been used. Therefore, it appears that the rule may be cost effective depending upon the changes made in the final rule, refinements to the draft evaluation, and the assumed value of a human life. It should be noted that the draft evaluation makes no attempt to quantify intangible benefits, such as the elimination of some of the present repetitive, overlapping and sometimes contradictory regulations, and the publication of fewer pages in the Code of Federal Regulations and **Federal Register** in the future.

Comments are invited on the draft evaluation. In particular, comments are invited on the assumptions made in the evaluation and the time-phasing proposed in the regulations. Changes in either could greatly affect the cost-benefit analysis. The proposals in this notice are intended to meet the objectives of lifesaving system improvement in the most cost-effective way, however, comments are specifically invited on ways to further reduce the cost of these regulations.

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Generally, the only small entities affected would be certain operators of offshore supply vessels, operating primarily in the Gulf of Mexico. These regulations provide for a number of alternative arrangements that minimize the cost impact on these operators, including the possibility to use life floats instead of lifeboats or liferafts. An optional arrangement for recovering persons that fall overboard is also permitted in lieu of the requirement to carry a rescue boat.

State and local governments that operate passenger ferry services in cold waters may be affected by the proposed requirement for survival craft on passenger vessels. These vessels would have the highest 1991 retrofit costs of all the vessels affected by these proposed rules at an estimated $50,300. Nevertheless, this is only about 0.1% of an estimated $50,000,000 replacement cost of such a vessel. For this reason, these regulations are not considered to have a significant impact on governments, or any small entity that may happen to operate similar vessels.

Three primary benefits of the proposed regulations are identified in the draft evaluation. First, the proposed regulations would resolve numerous outstanding recommendations made by the National Transportation Safety Board and Coast Guard Marine Boards of Investigation, and would result in the saving of life in future marine casualties where vessels must be abandoned. Second, repetitive, overlapping, and sometimes contradictory regulations will be eliminated. Third, U.S. registered vessels would not be subject to penalty or delay in foreign ports because of non-compliance with SOLAS 74/83.

Four comments on the ANPRM were to the effect that the costs identified in that notice were too low or that some particular element of the cost of the regulations were not taken into account. The draft evaluation includes a cost estimate that is more complete than the rough estimate used in the ANPRM. It should also be more accurate since it uses cost information we believe is more accurate than that used to estimate the cost in the ANPRM.

One comment stated that the benefits of the proposed rules were overestimated, and the costs underestimated. Another comment was interested in how the cost estimate is prepared. The draft evaluation contains an analysis of the costs and benefits. The draft evaluation is part of the docket and is available for inspection and copying at the Marine Safety Council (see **ADDRESSES** section at the beginning of this notice).

One comment noted that the cost of the regulations would put operators of self-propelled vessels at a greater disadvantage as compared to uninspected tug and barge operations. The Coast Guard does not have statutory authority to require any lifesaving equipment aboard uninspected vessels beyond a life preserver or other lifesaving device for each individual on board (46 U.S.C. 4101(b)). The Coast Guard would recommend that uninspected vessels comply with the regulations proposed in this notice for the particular size and service of vessel.

Recordkeeping Requirements

This proposed rulemaking contains information collection and recordkeeping requirements. Some provisions are minor revisions of existing sections that have previously been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). The section numbers of those provisions and the corresponding OMB approval numbers are as follows:

a.	§ 35.07–10	2115–0071
b.	§ 35.10–1(e)	2115–0071
c.	§ 35.10–2(e)	2115–0071
d.	§ 35.10–3(b)	2115–0071
e.	§ 35.90–70(a)	2115–0071
f.	§ 35.90–73(c)	2115–0071
g.	§ 78.17–50(f)	2115–0071
h.	§ 78.17–55(e)	2115–0071
i.	§ 78.37–5(b)	2115–0071
j.	§ 78.95–70(a)	2115–0071
k.	§ 78.95–73(c)	2115–0071
l.	§ 97.15–35(e)	2115–0071
m.	§ 97.15–40(e)	2115–0071
n.	§ 97.35–5(c)	2115–0071
o.	§ 97.90–70(a)	2115–0071

p. § 97.90–73(c)....2115–0071
q. § 109.311(a)....2115–0071
r. § 109.313(c)....2115–0071
s. § 109.425....2115–0007
t. § 109.433....2115–0071
u. § 167.55–5....2115–0071
v. § 167.65–2(e)....2115–0071
w. § 196.15–40(e)....2115–0071
x. § 196.35–5....2115–0071
y. § 199.80....2115–0542

Other information collection and recordkeeping requirements are either new or have not been approved by OMB. They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection and recordkeeping requirements should submit their comments to: Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comment to the Coast Guard as indicated under "**ADDRESSES.**" The section numbers are as follows:

a. § 35.10–1(a)
b. § 35.11–5(d)
c. § 35.40–19
d. § 35.40–40
e. § 35.40–43
f. § 35.40–45
g. § 35.40–48
h. § 35.40–50
i. § 35.40–55
j. § 35.90–30
k. § 35.90–40(c)
l. § 78.14–5(d)
m. § 78.17–50(a)
n. § 78.47–60
o. § 78.47–62
p. § 78.47–63
q. § 78.47–64
r. § 78.47–65
s. § 78.47–72
t. § 78.95–30
u. § 78.95–40(c)
v. § 97.14–5(d)
w. § 97.15–35(a)
x. § 97.37–37
y. § 97.37–39
z. § 97.37–40
aa. § 97.37–42
bb. § 97.37–43
cc. § 97.37–55
dd. § 97.90–30
ee. § 97.90–40(c)
ff. § 108.645
gg. § 108.646
hh. § 108.647
ii. § 108.649
jj. § 108.650
kk. § 109.215(a)
ll. § 109.303
mm. § 109.305(c)
nn. § 109.323(e)
oo. § 160.040–6
pp. § 196.37–37
qq. § 196.37–39
rr. § 196.37–40
ss. § 196.37–42
tt. § 196.37–43
uu. § 196.37–49
vv. § 199.80
ww. § 199.90
xx. § 199.175(c)
yy. § 199.175(c)(19)
zz. § 199.175(c)(40)
aaa. § 199.175(c)(46)

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this notice of proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Derivation Table

The regulations proposed in this notice are based in part on existing regulations in Title 46 of the Code of Federal Regulations that would be removed or revised, and also on Chapter III of the 1983 Amendments to the Safety of Life at Sea Convention, 1974. For the convenience of the user, the following derivation table shows the relationship of the regulations proposed in this notice with existing similar regulations and SOLAS 74/83. The right-hand column also lists certain resolutions of the International Maritime Organization that are related to SOLAS 74/83. These are IMO Res. A.414(XI), Code for the Construction and Equipment of Mobile Offshore Drilling Units; IMO Res. A.521(13), Recommendation on Testing of Life-Saving Appliances; and IMO Res. A.534(13), Code of Safety for Special Purpose Ships. The section number follows identification of the resolution. In the case of Resolution A.521, all references are in Part 2 of the resolution, with the part number listed first, followed by a "/", followed by the section number.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
(effective date)		1.1
§ 199.5	None	None
§ 199.7	None	None
§ 199.10(a)	None	None
§ 199.10(b)	§ 33.15–1(a), 75.01–1, 75.10–1, 75.15–1, 75.20–1, 75.25–1, 75.27–1, 75.30–1, 75.33–1, 75.40–1, 75.41–1, 75.43–1, 75.45–1, 75.50–1, 75.90–1, 78.87–1, 94.10–1(a), 94.10–1(b), 94.15–1, 94.20–1, 94.25–1, 94.30–1, 94.33–1, 94.35–1, 94.40–1, 94.43–1, 94.45–1, 94.50–1, 94.90–1, 97.85–1, 192.01–1, 192.10–1, 192.15–1, 192.20–1, 192.25–1, 192.30–1, 192.33–1, 192.35–1, 192.40–1, 192.43–1, 192.45–1, 192.50–1, 192.60–1, 196.90–1.	1.5, 8.1, 9.1, 21.3.1, 21.4.1
§ 199.10(c)	§ 30.10–35	1.2
§ 199.10(d)	None	1.3
§ 199.10(e)	None	1.1
§ 199.10(f)	§ 75.05–5, 94.05–5, 108.103, 192.05–5	None
§ 199.15	§ 33.01–5, 33.05–1, 33.05–2, 33.10–10(j), 33.10–15(a)(3), 75.10–90, 75.15–90, 75.20–90, 75.25–90, 75.30–90, 75.33–90, 75.40–90, 75.43–90, 75.45–90, 75.50–90, 94.10–90, 94.15–90, 94.20–90, 94.25–90, 94.30–90, 94.33–90, 94.40–90, 94.43–90, 94.50–5(b), 94.50–90, 192.10–90, 192.15–90, 192.20–90, 192.25–90, 192.30–90, 192.33–90, 192.40–90, 192.43–90, 192.45–90, 192.50–5(b), 192.50–90.	1.4.1, 1.4.2
§ 199.15(a)	§ 33.10–15(b)	1.4.3
§ 199.15(b)	§ 33.01–5	1.6, 6.1
§ 199.15(c)	None	1.6, 21.4.1
§ 199.15(d)	None	1.6, 26.3
§ 199.15(e)	None	None
§ 199.15(f)	None	None
§ 199.15(g)	None	None
§ 199.15(h)	None	None
§ 199.15(i)	None	None
§ 199.15(j)	None	None
§ 199.15(k)	None	

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 199.15(l)	§ 75.l0-5(a)(2), 94.10-5(a)(2), 192.10-5(a)(2)	None
§ 199.15(m)	None	1.4.4, 1.4.5
§ 199.25	None	None
§ 199.30 "Child"	None	None
§ 199.30 "Embarkation station"	None	None
§ 199.30 "Fleet angle"	§ 33.10-l0(k), 75.33-10(d), 94.33-10(d), 108.509(a), 192.33-10(d)	None
§ 199.30 "Float-free"	None	3.4
§ 199.30 "Free-fall"	None	3.5
§ 199.30 "Immersion suit"	§ 33.37-5(c) & (d), 94.41-5(c) & (d), 108.513(d), 192.41-5(c) & (d)	3.6
§ 199.30 "Inflatable"	None	3.7
§ 199.30 "Inflated"	None	3.8
§ 199.30 "Launching appliance"	None	3.9
§ 199.30 "Length"	§ 42.13-15(a)	3.10
§ 199.30 "Molded depth"	§ 42.13-15(e)	3.11
§ 199.30 "Muster station"	None	3
§ 199.30 "Novel"	None	3.12
§ 199.30 "Retrieval"	None	3.14
§ 199.30 "Seagoing condition"	None	3
§ 199.30 "Survival craft"	None	3.17
§ 199.30 "Toxic vapor or gas"	None	3
§ 199.40	§ 30.15-1(a), 70.15-1(a), 90.15-1(a), 108.105, 188.15-1(a)	4.3
§ 199.62	None	6.2.4
§ 199.64	§ 33.60, 75.60, 94.60,108.523,109.307(a), 192.65	6.2.3
§ 199.66	§ 33.15-25, 75.10-10(a)(4), 75.55-1, 94.55-1, 108.519, 109.321, 192.55-1	6.2.1, 41.7.8
§ 199.68(a)(1)	§ 33.45-5, 75.90-5(a), 94.90-5(a), 108.521(a), 192.60-5(a)	6.3
§ 199.68(a)(2)	§ 33.45-1, 75.90-10, 94.90-5(b)	None
§ 199.68(b)	§ 94.90-10, 192.60-10(a)	None
§ 199.68(c)	§ 94.90-15	None
§ 199.68(d)(1)	§ 33.45-1, 33.45-5, 75.90-5(c), 94.90-5(a), 108.521(b), 192.60-5(a)	6.3
§ 199.68(d)(2)	§ 33.01-35, 33.45-10	6.3
§ 199.70(a)	§ 33.40-1(a), 33.40-1(b), 33.40-5(b), 33.40-5(c), 33.40-15, 75.43-5(a), 75.43-5(b), 75.43-10(b), 75.43-15, 94.43-5(a), 94.43-5(b), 94.43-10(b), 94.43-15, 108.515(b), 108.515(c), 108.515(e), 108.515(f), 192.43-5(a), 192.43-5(b), 192.43-10(b), 192.43-15.	7.1.1.2, 7.1.2, 7.1.3, 31.4
§ 199.70(b)	None	7.1.1.1
§ 199.70(c)	§ 33.40-1(c)(1), 75.43-5(c)(1), 75.43-10(c), 94.43-5(c)(1), 94.43-10(c), 108.515(d), 192.43-5(c)(1), 192.43-10(c).	7.1.3
§ 199.70(d)	§ 33.40-5(d), 75.43-10(d), 94.43-10(d), 192.43-10(d)	30.2.6
§ 199.72(a)	§ 33.35-1, 33.35-15, 75.40-5(a), 75.40-10(a), 75.40-10(c), 94.40-5(a), 94.40-10(a), 94.40-10(c), 108.514(a), 108.514(c), 192.40-5, 192.40-10(a), 192.40-10(b).	7.2
§ 199.72(b)	§ 33.35-1(b), 94.40-10(c), 192.40-10(b)	None
§ 199.72(c)	§ 94.40-10(b)	None
§ 199.73	None	7.3
§ 199.75(a)	§ 33.38-1, 75.40-30, 94.42-1, 108.513(e), 108.514(e), 192.42-1	21.3.2, 27.2.2
§ 199.75(b)	None	21.3.1, 27.2.1
§ 199.76	§ 33.38-5, 75.40-5(b), 94.42-5, 108.513(f), 108.514(d), 192.42-5	32.1.6
§ 199.78	§ 33.35-5, 33.37-15, 75.40-15(a), 75.40-15(c), 75.40-20, 75.41-10, 78.87-5, 94.40-15, 94.41-10, 97.85-5, 108.513(g), 108.514(b), 109.313, 109.314, 192.41-10, 196.90-5.	7.2.2
§ 199.80	§ 35.10-1(a), 78.13-1(a), 97.13-1(a), 196.13-1(a)	8.1, 8.2
§ 199.80(a)	§ 35.10-1(a), 35.10-1(b), 78.13-1, 78.13-5, 78.13-15, 97.13-5, 97.13-10, 109.501, 109.503(a), 109.505, 196.13-5, 196.13-10.	8.3, 53
§ 199.80(b)	§ 75.40-25, 78.47-47	8.4
§ 199.80(c)	§ 35.10-9, 78.49-1, 97.39-1, 108.655, 196.39-1	8.2
§ 199.80(d)	§ 160.071-15(b)	8.2
§ 199.90	§ 35.10-9(a), 78.49-1(a), 97.39-1(a), 108.655, 196.39-1(a)	9.2
§ 199.110(a)	§ 75.15-10(a)(3)	11.2
§ 199.110(b)	§ 72.10-40, 92.10-40, 108.165, 190.10-40	11.3
§ 199.110(c)	None	11.6
§ 199.110(d)	None	None
§ 199.110(e)	§ 33.20-1(c)(1), 33.20-3, 75.50-5, 75.50-7, 94.50-5, 94.50-7, 108.525(a), 108.525(b), 109.341(b), 192.50-5, 192.50-7.	11.7, 48.7.1
§ 199.110(f)	§ 33.20-1(f), 75.15-10(b)(7), 94.15-10(b)(6), 108.507(a)(4), 192.15-10(b)(6)	11.8,48.6
§ 199.110(g)	§ 108.508(a)(5)	11.8, 38.4.1.2
§ 199.120	§ 33.20-1(d), 75.15-10(b)(4), 75.15-10(c)(1), 94.15-10(b)(4), 192.15-10(1)(4)	12
§ 199.130(a)	None	11.1
§ 199.130(a)(1)	§ 33.20-1(e), 75.15-10(b)(2), 75.15-10(b)(6), 75.15-10(c)(1), 75.25-5(d), 75.25-5(f), 94.15-10(a)(2), 94.15-10(a)(3), 94.15-10(b)(2), 94.25-5(d), 94.25-5(f), 108.511(a), 108.511(c), 192.15-10(a)(2), 192.15-10(a)(3), 192.15-10(b)(2), 192.25-5(d), 192.25-5(f).	13.1
§ 199.130(a)(2)	§ 33.20-15(c), 75.15-10(b)(5), 75.25-5(c), 75.27-5(c), 94.15-10(b)(5), 94.25-5(c), 108.508(d), 192.15-10(b)(5), 192.25-5(c).	48.6
§ 199.130(a)(3)	§ 33.10-5(d), 75.30-5(b), 94.30-5(b), 160.015-2(g), 192.30-5(b)	48.1.9
§ 199.130(b)	§ 33.05-3(c), 33.05-20(c)	11.1
§ 199.130(c)	§ 94.10-40(a)	None
§ 199.130(d)	None	13.1.2
§ 199.133(a)	§ 33.05-3(c)(2), 75.15-10(b)(4), 94.15-10(b)(4), 108.511(d), 192.15-10(b)(4)	13.2
§ 199.133(b)	§ 33.20-1(a), 75.15-10(b)(1), 94.15-10(b)(1), 192.15-10(b)(1)	13.3
§ 199.133(c)	None	41.6.11
§ 199.135(a)	None	13.4

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 199.135(b)	None	38.1.2
§ 199.135(c)	None	None
§ 199.135(d)	None	13.5
§ 199.135(e)	None	39.9.2
§ 199.135(f)	§33.20-20, 75.15-10(e), 94.15-10(e), 108.510, 192.15-10(e)	30.2, 38.6.3 (IMO Res. A.414(XI)-10.5)
§ 199.137	§ 33.20-25, 94.15-10(d), 192.15-10(d)	None
§ 199.140(a)	§ 75.10-10(a)(3)	14
§ 199.140(b)	None	41.6.11
§ 199.140(c)	None	47.3.11
§ 199.150(a)	§ 33.10-5(b), 33.20-1(a), 75.30-10(a), 94.30-10(a), 108.506(c), 192.30-10(a)	15.1
§ 199.150(b)	§ 33.10-10(d), 75.15-10(a)(4), 75.27-5(b), 75.33-5(b), 94.15-10(a)(4), 94.33-5(b), 192.15-10(a)(4), 192.33-5(b).	48.1.1
§ 199.150(c)	§ 33.10-1(b), 33.10-1(c), 75.25-5(c), 75.25-10(a), 75.25-15(a), 94.25-5(c), 94.25-10(a), 94.25-15(a), 108.508(d), 192.25-5(c), 192.25-10(a).	48.1.3
§ 199.150(d)	§ 75.27-5(b)	48.1.8
§ 199.150(e)	§ 33.10-20(b), 75.10-5(a)(6)(ii), 94.10-5(a)(4)(ii), 192.10-5(a)(4)(ii)	15.4
§ 199.150(f)	§ 75.15-10(a)(2), 94.15-10(a)(2), 192.15-10(a)(2)	15.5
§ 199.150(g)	§ 75.15-10(a)(3), 94.15-10(a)(3), 192.15-10(a)(3)	38.4.2, 38.4.3, 41.3.1, 41.3.2
§ 199.150(h)	§ 33.10-5(e), 75.30-15(a), 94.30-15(a), 108.507(b), 108.507(d), 108.508(b), 108.508(c), 192.30-15(a).	15.3, 48.1.4
§ 199.150(i)	§ 33.20-1(c)(4), 75.15-10(b)(10), 75.15-10(c)(2), 94.15-10(b)(8), 108.511(d), 192.15-10(b)(8).	15.8
§ 199.150(j)	None	15.9
§ 199.153(a)	§ 33.10-1(a), 33.10-1(d), 33.10-5(c), 33.10-10(g), 33.10-10(i), 75.25-5(a), 75.27-5(a), 75.27-5(d), 75.30-5(a), 75.30-10(b), 75.30-15(b), 94.25-5(a), 94.30-5(a), 94.30-10(b), 94.30-15(b), 108.507(a)(2), 108.507(a)(3), 108.508(a)(1), 108.508(a)(2), 108.508(a)(3), 108.508(a)(4), 108.508(a)(6), 192.25-5(a), 192.30-5(a), 192.30-10(b), 192.30-15(b).	30.2, 48.2
§ 199.153(b)	§ 33.10-5(a), 33.10-10(a), 33.10-10(b), 33.10-10(c), 75.30-5(c), 75.33-5(a), 75.33-10(a), 75.33-10(b), 94.30-5(c), 94.33-5(a), 94.33-10(a), 108.507(a)(5), 108.507(a)(6), 192.30-5(c), 192.33-5(a), 192.33-10(a).	48.1.8, 48.2.1
§ 199.153(c)	§ 33.10-10(b), 75.33-10(c), 94.33-10(c), 192.33-10(c)	None
§ 199.153(d)	§ 33.10-10(d), 75.33-5(b), 94.33-5(b), 108.506(a), 192.33-5(b)	15.6
§ 199.153(e)	§ 33.10-10(g), 75.33-5(d), 94.33-5(d), 108.507(a)(6), 160.015-2(h), 192.33-5(d)	48.2.2
§ 199.153(f)	§ 33.10-10(k), 75.33-10(d), 94.33-10(d), 108.509(b), 192.33-10(d)	48.2.2
§ 199.153(g)	§ 33.10-10(k), 75.33-10(d), 94.33-10(d), 108.509(b), 192.33-10(d)	48.2.2
§ 199.153(h)	§ 75.33-5(c), 94.33-5(c), 108.507(c), 160.015-2(i), 192.33-5(c)	None
§ 199.153(i)	None	48.2.6
§ 199.153(j)	§ 33.10-5(f)(1)(iii), 75.35-5(b)(4)(iii), 94.35-5(b)(4)(iii), 192.35-5(b)(4)(iii)	None
§ 199.153(k)	§ 33.10-5(f)(1)(iii), 75.35-5(1)(4)(iii), 94.35-5(b)(4)(iii), 192.35-5(b)(4)(iii)	48.2.7
§ 199.153(l)	§ 160.015-3(k)(2)	48.2.5
§ 199.155	None	48.5.1
§ 199.157(a)	None	28.2
§ 199.157(b)	§ 160.015-2(f)	15.2, 48.1.10
§ 199.157(c)	None	15.3
§ 199.157(d)	§ 33.20-1(c)(2), 75.25-10(b), 75.25-15(b), 94.25-10(b), 94.25-15(b), 192.25-10(b).	15.10
§ 199.160	§ 33.20-1(g), 75.25-5(g), 94.10-55(b)(2)(iii), 94.25-5(g), 192.10-55(b)(2)(iii), 192.25-5(g).	16.1
§ 199.160(a)	None	16.2
§ 199.160(b)	None	None
§ 199.160(c)	§ 75.30-10(d)	16.3
§ 199.160(d)	§ 75.30-10(d)	16.4, 48.2.3, 48.2.8
§ 199.170(a)	§ 33.55-1(a), 33.55-1(b), 75.45-5(a), 75.45-10, 94.45-5(a), 94.45-10, 108.517(a), 192.45-5(a), 192.45-10.	17
§ 199.170(b)	§ 33.55-1(a), 33.55-1(c), 75.45-5(b), 75.45-10, 94.45-5(b), 94.45-10, 108.517(b), 192.45-5(b), 192.45-10.	None
§ 199.170(c)	§ 33.55-10(a), 33.55-10(b), 75.45-15, 94.45-15, 192.45-15	49.1
§ 199.170(d)	§ 33.55-10(a), 33.55-10(b), 75.45-15(a)(6), 75.45-15(b)(6), 94.45-15(a)(6), 94.45-15(b)(6), 192.45-15(a)(6), 192.45-15(b)(6).	None
§ 199.170(e)	§ 33.55-5, 109.320(a)	None
§ 199.175(a)	§ 33.15-1(b), 33.15-1(d), 33.15-1(e), 75.20-5(a), 75.20-5(c), 75.20-5(d), 94.20-5(a), 94.20-5(c), 94.20-5(d), 108.503(f), 192.20-5(a), 192.20-5(c), 192.20-5(d).	41.8
§ 199.175(b)	§ 33.15-16	38.5, 39.10
§ 199.175(c)	§ 33.15-5, 33.15-15, 75.20-10, 75.20-20, 94.20-10, 94.20-20, 108.503(d), 108.503(e), 108.503(f), 192.20-10, 192.20-20.	38.5.2, 38.5.3, 41.8.32, 47.2.1
§ 199.175(c)(1)	(Reserved)	None
§ 199.175(c)(2)	§ 33.15-10(a), 75.20-15(a), 94.20-15(a), 192.20-15(a)	38.5.1.3, 41.8.3, 47.2.2.2
§ 199.175(c)(3)	§ 33.15-10(b), 75.20-15(b), 94.20-15(b), 192.20-15(b)	41.7.12, 41.8.25, 42.2
§ 199.175(c)(4)	§ 33.15-10(c), 33.15-20(a), 75.20-15(c), 75.20-25(a), 94.20-15(c), 94.20-25(a), 192.20-15(c), 192.20-25(a).	41.8.2, 47.2.3.1, 47.2.4.5
§ 199.175(c)(5)	§ 33.15-10(d), 75.20-15(d), 94.20-15(d), 192.20-15(d)	41.8.3, 47.2.3.2
§ 199.175(c)(6)	§ 160.051-8(c)(13)	38.5.1.7, 41.8.23
§ 199.175(c)(7)	§ 33.15-10(e), 75.20-15(e), 94.20-15(e), 192.20-15(e)	41.8.5, 47.2.2.3
§ 199.175(c)(8)	§ 33.15-10(mm), 75.20-15(oo), 94.20-15(mm), 192.20-15(mm)	42.3
§ 199.175(c)(9)	None	41.8.10
§ 199.175(c)(10)	§ 33.15-10(f), 75.20-15(f), 94.20-15(f), 192.20-15(f)	None
§ 199.175(c)(11)	§ 33.15-10(g), 75.20-15(g), 75.20-25(b), 94.20-15(g), 94.20-25(b), 192.20-15(g), 192.20-25(b).	38.5.1.20, 41.8.11
§ 199.175(c)(12)	None	6.2.3
§ 199.175(c)(13)	§ 33.15-10(h), 75.20-15(h), 94.20-15(h), 192.20-15(h)	41.8.28

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 199.175(c)(14)	§ 33.15-10(i), 75.20-15(i), 94.20-15(i), 192.20-15(i)	38.5.1.8, 41.8.20, 47.2.2.9
§ 199.175(c)(15)	§ 33.15-10(11), 75.20-15(nn), 94.20-15(11), 192.20-15(11)	38.5.1.17, 41.8.26
§ 199.175(c)(16)	§ 33.15-10(j), 75.20-15(j), 94.20-15(j), 192.20-15(j)	38.5.1.13, 41.8.16, 47.2.2.7
§ 199.175(c)(17)	§ 33.15-10(k), 75.20-15(k), 94.20-15(k), 192.20-15(k)	41.8.8
§ 199.175(c)(18)	§ 33.15-10(1), 75.20-15(1), 94.20-15(1), 192.20-15(1)	38.5.1.1, 41.8.24, 47.2.2.10
§ 199.175(c)(19)	§ 160.051-8(b)(13)	38.5.1.23
§ 199.175(c)(20)	§ 33.15-10(m), 75.20-15(m), 75.20-25(c), 94.20-15(m), 94.20-25(c), 192.20-15(m), 192.20-25(c).	41.8.22
§ 199.175(c)(21)	None	38.5.1.2, 47.2.3.3, 47.2.4.1
§ 199.175(c)(22)	§ 33.15-10(n), 75.20-15(n), 94.20-15(n), 192.20-15(n)	41.3.3
§ 199.175(c)(23)	§ 33.15-10(o), 75.20-15(o), 94.20-15(o), 192.20-15(o)	41.7.11
§ 199.175(c)(24)	§ 33.15-10(q), 75.20-15(q), 94.20-15(q), 192.20-15(q)	None
§ 199.175(c)(25)	§ 33.15-10(s), 75.20-15(s), 94.20-15(s), 192.20-15(s)	None
§ 199.175(c)(26)	§ 33.15-10(t), 33.15-20(c), 75.20-15(t), 75.20-25(e), 94.20-15(t), 94.20-25(e), 192.20-15(t), 192.20-25(e).	None
§ 199.175(c)(27)	§ 33.15-10(v), 75.20-15(v), 75.20-25(f), 94.20-15(v), 94.20-25(f), 192.20-15(v), 192.20-25(f).	38.5.1.15, 41.8.17
§ 199.175(c)(28)	§ 33.15-10(w), 33.15-10(cc), 33.15-20(d), 33.15-20(g), 75.20-15(w), 75.20-15(dd), 75.20-25(g), 75.20-25(k), 94.20-15(w), 94.20-15(cc), 94.20-25(g), 192.20-15(w), 192.20-25(g).	41.8.1, 47.2.2.1
§ 199.175(c)(29)	§ 33.15-10(x), 75.20-15(x), 94.20-15(x), 192.20-15(x)	None
§ 199.175(c)(30)	§ 160.051-8(b)(7)	38.5.1.6
§ 199.175(c)(31)(i)	§ 33.15-10(z), 75.20-15(z), 94.20-15(z), 192.20-15(z)	41.8.7
§ 199.175(c)(31)(ii)	None	47.2.2.5
§ 199.175(c)(31)(iii)	§ 33.15-20(f), 75.20-25(i), 94.20-25(i), 192.20-25(i)	38.3.3, 40.6.1
§ 199.175(c)(32)	§ 33.15-10(bb), 75.20-15(bb), 75.20-25(j), 94.20-15(bb), 94.20-25(j), 192.20-15(bb), 192.20-25(j).	38.5.1.18, 41.8.12
§ 199.175(c)(33)	§ 160.051-8(b)(9)	47.2.4.3
§ 199.175(c)(34)	None	38.5.1.14, 41.8.30, 47.2.2.12
§ 199.175(c)(35)	None	None
§ 199.175(c)(36)	§ 160.051-8(c)(7)	47.2.4.4
§ 199.175(c)(37)	§ 33.15-10(dd), 75.20-15(ee), 94.20-15(dd), 192.20-15(dd)	None
§ 199.175(c)(38)	§ 33.15-10(ee), 33.15-20(h), 75.20-15(ff), 75.20-25(l), 94.20-15(ee), 94.20-25(l), 192.20-15(ee), 192.20-25(l).	38.5.1.5, 41.8.6, 47.2.2.4
§ 199.175(c)(39)	§ 75.20-15(gg)	41.8.29, 47.2.2.11
§ 199.175(c)(40)	§ 160.051-8(c)(15)	38.5.1.21, 41.8.21
§ 199.175(c)(41)	§ 33.15-10(ff) 75.20-15(hh), 75.20-25(m), 94.20-15(ff), 94.20-25(m), 192.20-15(ff), 192.20-25(m).	38.5.1.12, 41.8.15
§ 199.175(c)(42)	§ 33.15-10(gg), 33.15-20(i), 75.20-15(ii), 75.20-25(m), 94.20-15(gg), 94.20-25(m), 192.20-15(gg), 192.20-25(m).	38.5.1.11, 41.8.14
§ 199.175(c)(43)	§ 33.15-10(hh), 33.15-20(i), 75.20-15(jj), 94.20-15(hh), 192.20-15(hh)	38.5.1.10, 41.8.13
§ 199.175(c)(44)	§ 33.20-1(c)(5), 75.15-10(b)(8), 94.15-10(b)(7), 192.15-10(b)(7)	41.7.9
§ 199.175(c)(45)	§ 160.051-8(c)(9)	38.5.1.4, 47.2.4.2
§ 199.175(c)(46)	§ 160.051-8(b)(3)	38.5.1.21, 41.8.4
§ 199.175(c)(47)	§ 33.15-10(nn), 75.20-15(pp), 94.20-15(nn), 192.20-15(nn)	38.5.1.16, 41.8.18
§ 199.175(c)(48)	None	38.5.1.24, 41.8.31, 47.2.2.13
§ 199.175(c)(49)	§ 33.15-10(ii), 75.20-15(kk), 94.20-15(ii), 192.20-15(ii)	41.8.27
§ 199.175(c)(50)	None	47.2.2.6
§ 199.175(c)(51)	§ 33.15-10(jj), 33.15-10(oo), 75.20-15(ll), 75.20-15(qq), 75.20-25(n), 94.20-15(jj), 94.20-15(oo), 94.20-25(n), 192.20-15(oo), 192.20-25(n).	38.5.1.19, 41.8.9
§ 199.175(c)(52)	§ 33.15-10(kk), 75.20-15(mm), 94.20-15(kk), 192.20-15(kk)	38.5.1.9, 41.8.19, 47.2.2.8
§ 199.175(d)	§ 33.15-15, 94.20-30, 192.20-30	None
§ 199.175(d)(1)	§ 33.15-20(a), 94.20-35(a), 192.20-35(a)	None
§ 199.175(d)(2)	§ 33.15-20(b), 94.20-35(b), 192.20-35(b)	None
§ 199.175(d)(3)	§ 33.15-20(d), 94.20-35(c), 192.20-35(c)	None
§ 199.175(d)(4)	§ 33.15-20(f), 94.20-35(d), 192.20-35(d)	None
§ 199.175(d)(5)	§ 33.15-20(j), 94.20-35(e), 192.20-35(e)	None
§ 199.200	None	None
§ 199.201(a)	§ 75.05-1, 192.05-1	None
§ 199.201(a)(1)	§ 75.10-5(a)(1), 192.10-5(a)(1)	None
§ 199.201(a)(2)	None	None
§ 199.201(a)(3)	None	30.2, 41, 42
§ 199.201(a)(4)	§ 75.10-5(b)(3), 75.10-5(b)(4), 192.10-5(b)(2), 192.10-5(b)(3)	30.2, 41, 44
§ 199.201(a)(5)	§ 75.10-5(b)(1), 192.10-5(b)(1)	30.2, 38, 38.2.1, 39
§ 199.201(a)(6)	None	30.2, 38, 38.2.1, 40
§ 199.201(b)(1)	§ 75.10-10(a)(1), 75.10-10(a)(5), 192.10-10(f)	None
§ 199.201(b)(2)(i)	§ 75.15-10(c)(1), 75.27-5(g)	20.1.1.1
§ 199.201(b)(2)(ii)	§ 75.10-10(b)(1), 75.10-10(c)(3), 75.15-10(c)(4), 192.10-10(f)	20.1.1.1
§ 199.201(c)	§ 75.10-10(a)(6), 75.10-15(a)	13.6, 20.1.1.2
§ 199.201(c)(1)	§ 75.10-10(a)(6)	20.1.3
§ 199.201(c)(2)(i)	§ 75.10-10(a)(6), 75.15-10(c)(1), 75.27-5(g)	20.1.2.1
§ 199.201(c)(2)(ii)	§ 75.10-10(a)(6), 75.10-10(b)(2), 75.15-10(c)(3), 75.15-10(c)(4)	20.1.2.1
§ 199.201(d)	§ 75.10-20(a)	13.6, 20.1.2.2
§ 199.201(d)(1)	§ 75.10-20(a)	None.
§ 199.201(d)(2)	§ 75.10-20(a), 75.15-10(c)(1), 75.15-10(c)(4), 75.27-5(g)	None.
§ 199.201(e)(1)	§ 75.10-20(a), 75.10-20(c)	None.
§ 199.201(e)(2)	§ 75.10-20(a), 75.10-20(c), 75.15-10(c)(1), 75.15-10(c)(4), 75.27-5(g)	None.
§ 199.201(f)	§ 75.10-10(a)(8), 75.10-10(b)(4), 75.10-15(b), 75.10-15(c), 75.10-20(a)(2), 75.10-20(a)(3), 75.10-20(a)(4), 75.10-25, 75.15-10(c)(3).	20.1.5.
§ 199.201(g)	§ 75.10-20(a)(3), 75.10-20(b)	None.
§ 199.201(h)	§ 75.10-20(a)(2), 75.10-20(a)(3), 75.10-20(b)	None.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 199.201(i)	§ 75.10-20(a)(2), 75.10-20(a)(3)	None.
§ 199.202(a)	§ 75.10-5(e)(1), 75.10-10(a)(3), 75.10-25(b)(2), 75.10-25(b)(3), 192.10-5(e)	20.2.1.
§ 199.202(b)	§ 75.10-5(e)(1), 75.10-10(a)(3), 75.10-25(b)(1)(iii), 192.10-5(e)	20.2.2.
§ 199.202(c)	None	20.2.3
§ 199.202(d)	§ 75.10-5(e)(2), 192.10-5(e)	None.
§ 199.203	§ 75.27-5(f)	20.3.
§ 199.211	§ 75.43-10(a)	21.1.
§ 199.212	§ 75.40-10(b), 75.40-15(b)	21.2.
§ 199.213	§ 75.40-30(a)	21.3.2.
§ 199.214	§ 75.41-5	21.4.2.
§ 199.217(a)	None	53.7.
§ 199.217(b)	§ 78.13-15(a)	None.
§ 199.220	None	22.
§ 199.230(a)	§ 75.15-10(b)(4), 192.15-10(b)(4)	13.2.
§ 199.230(b)	§ 75.15-10(c)(8), 192.15-10(c)(3)	23, 38.6.1, 48.3.
§ 199.240	None	24.
§ 199.245(a)	§ 75.15-10(a)(1), 192.15-10(a)(1)	38.4.2.
§ 199.245(b)	§ 75.15-10(b)(3), 75.27-5(f), 192.15-10(b)(3)	20.1.4.
§ 199.250	§ 75.20-15(cc)	6.2.2.
§ 199.260	None	None.
§ 199.261(a)	§ 33.01-5, 94.05-1, 192.05-1	None.
§ 199.261(a)(1)	§ 94.10-5(a), 192.10-5(a)	None.
§ 199.261(a)(2)	§ 33.05-3(e), 33.10-15(a), 33.10-20(a), 94.10-5(a), 192.10-5(a)	30.2, 41, 44.
§ 199.261(a)(3)	§ 33.01-30(f), 94.10-5(b)(2), 192.10-5(b)(2)	30.2, 38, 38.2.1, 39.
§ 199.261(a)(4)	§ 33.01-30(d), 94.10-5(b)(1), 192.10-5(b)(1)	38.2.1.
§ 199.261(a)(5)	§ 33.01-30(e), 94.10-5(c), 192.10-5(c)	None.
§ 199.261(a)(6)	None	None.
§ 199.261(b)(1)	§ 33.05-3(a), 33.05-5(a), 33.05-15(a), 94.10-10(a), 94.10-10(d), 94.10-15(a), 192.10-10(a), 192.10-15(a).	26.1.1.1.
§ 199.261(b)(2)	§ 33.05-3(f), 33.20-15(b), 94.10-10(e), 192.10-10(d)	13.6, 26.1.1.2.
§ 199.261(c)	None	26.1.2.
§ 199.261(d)	§ 33.05-3(g), 33.05-5(c), 33.05-15(c), 33 07-1, 33.07-10(b), 94.10-10(b), 94.10-10(f), 94.10-15(b), 94.10-20(d), 94.10-55, 192.10-10(e), 192.10-15(b), 192.10-55.	13.6, 26.1.3.
§ 199.261(e)(1)	§ 33.05-20(a), 33.05-25(a), 94.10-40(a), 94.10-45(a), 94.10-45(b), 192.10-40(a)	None.
§ 199.261(e)(2)	§ 33.05-20(c), 94.10-40(a), 94.10-45(a), 94.10-45(b), 192.10-40(a)	None.
§ 199.261(f)	§ 33.05-20(d), 33.05-25(d), 33.07-1, 33.07-10(b), 94.10-40(b), 94.10-45(d), 94.10-55, 192.10-40(b), 192.10-55.	None.
§ 199.261(g)	§ 33.05-25(a), 94.10-40(a), 192.10-40(a)	None.
§ 199.261(h)	§ 33.05-3(f), 94.10-10(e), 94.10-15(c), 192.10-10(d)	26.1.4.
§ 199.261(i)	§ 75.10-10(a)(7), 94.10-20(b)(5)	None.
§ 199.261(j)	§ 94.10-40(a)	None.
§ 199.262(a)	§ 33.01-30(a), 33.07-10(c), 94.10-5(e)(1), 94.10-55(b)(1)(iii), 94.10-55(b)(2)(i), 94.10-55(b)(3)(i), 192.10-5(e)(1), 192.10-55(b)(1)(iii), 192.10-55(b)(2)(i), 192.10-55(b)(3)(i).	26.2.
§ 199.262(b)	**§ 33.01-30(a), § 33.07-10(c), 94.10-5(e)(1), 94.10-20(b)(1), 94.10-20(b)(2), 94.10-20(b)(3), 94.10-20(b)(4), 94.10-45(c), 94.10-55(b)(1)(iii), 94.10-55(b)(2)(i), 94.10-55(b)(3)(i), 192.10-5(e)(1), 192.10-55(b)(1)(iii), 192.10-55(b)(2)(i), 192.10-55(b)(3)(i)**	None.
§ 199.262(c)	§ 33.01-30(a), 33.07-10(c), 94.10-5(e)(1), 94.10-45(c), 94.10-55(b)(1)(iii), 94.10-55(b)(2)(i), 94.10-55(b)(3)(i), 192.10-5(e)(1), 192.10-55(b)(1)(iii), 192.10-55(b)(2)(i), 192.10-55(b)(3)(i).	None.
§ 199.262(d)	**§ 33.01-30(a), § 33.07-10(c), 94.10-5(e)(2), 94.10-45(c), 94.10-55(b)(1)(iii), 94.10-55(b)(2)(i), 94.10-55(b)(3)(i), 192.10-5(e)(2), 192.10-55(b)(1)(iii), 192.10-55(b)(2)(1), 192.10-55(b)(3)(i).**	None.
§ 199.262(e)	§ 94.10-55(b)(1)(iv)	None.
§ 199.262(f)	None	None.
§ 199.271(a)	§ 33.40-5(a), 94.43-IC(a), 192.43-10(a)	27.1.1.
§ 199.271(b)	§ 33.40-10	None.
§ 199.271(c)	§ 94.43-10(a), 192.43-10(a)	None.
§ 199.272	§ 33.35-5, 94.40-15(a), 192.40-15(a)	None.
§ 199.273(a)	§ 33.37-1, 94.41-1, 192.41-1	27.3.2.3, 27.3.3.3.
§ 199.273(b)	§ 33.37-5(a), 94.41-5(a), 97.85-10, 192.41-5(a), 196.90-10	27.3.2, 27.3.3.
§ 199.273(c)	§ 33.37-5(b), 94.41-5(b), 192.41-5(b)	None.
§ 199.273(d)	None	27.3.4.
§ 199.280(a)	None	None.
§ 199.280(b)	None	28.1.
§ 199.280(c)	None	28.1.
§ 199.280(d)	§ 33.20-15(a), 94.15-l0(b)(3), 192.15-10(b)(3)	38.4.3, 41.3.2, 48.1.11.
§ 199.280(e)	§ 33.20-15(a), 94.15-l0(a)(1), 192.15-10(a)(1)	26.1.5.
§ 199.290(a)	§ 33.05-3(c)(2), 94.15-10(b)(4), 192.15-10(b)(4)	13.2.
§ 199.290(b)	§ 33.20-15(d), 94.15-l0(c)(3), 94.15-10(c)(4), 192.15-10(c)(3)	29, 38.6.1, 48.3.
§ 199.300	None	None.
§ 199.310(a)	§ 33.0l-5, 33.01-30(b)	26.1.6.
§ 199.310(b)	None	26.1.7.
§ 199.310(c)	§ 33.07-1, 33.07-10(a)	26.1.3.
§ 199.310(d)	None	13.1.5.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 199.320	§ 154.1445	48.1.2.
§ 199.400	None	(IMO Res. A.534(13)).
§ 199.405	None	(IMO Res. A.534(13)).
§ 199.410	None	None.
§ 199.500	None	None.
§ 199.505	§ 167.35	None.
§ 199.600	None	None.
§ 199.605(a)	§ 108.50(b), I08.503(c), I08.505(b)	(IMO Res. A.414(XI)–10.1).
§ 199.605(b)	§ 108.503(a), 108.505(a), 108.505(c), 108.511(b)	(IMO Res. A.414(XI)–10.1).
§ 199.605(c)	§ 108.503(a), 108.505(a)	None.
§ 199.610	None	(IMO Res. A.414(XI)–10.2).
§ 199.630(a)	§ 108.515(a)	(IMO Res. A.414(XI)–10.4).
§ 199.630(b)	§ 108.515(d)(2)	(IMO Res. A.414(XI)–10.4).
§ 199.640	§ 108.513(a), 108.513(b), 108.513(c)	None.
§ 199.645	None	(IMO Res. A.414(XI)–10.6).
§ 199.650(a)	None	None.
§ 199.650(b)	None	(IMO Res. A.414(XI)–10.5.2).
§ 199.650(c)	§ 108.511(e)	(IMO Res. A.414(XI)–10.5.2).
§ 199.650(d)	108.506(a), 108.506(b), 108.511(d)	None.
§ 199.650(e)	None	None.
§ 199.650(f)	None	None.
§ 199.650(g)	§ 108.525(c), 108.525(d), 108.525(e)	None.
§ 199.650(h)	§ 108.527	None.
§ 30.05–1	None	None.
§ 30.35–1	None	None.
§ 31.01–1(a)	§ 31.01–1(a)	Chap. I, Reg. 8.
§ 31.01–5(c)	§ 33.01–1	Chap. I, Reg. 8.
§ 31.01–5(c)(1)	§ 33.01–27, 33.10–5(f)	(IMO Res. A.521(13)–2/5.3.1, 6.1.2, 6.1.3, 6.1.4, 6.2.1, 6.2.2, 6.2.4).
§ 31.01–5(c)(2)	None	None.
§ 31.01–5(c)(3)	None	(IMO Res. A.521(13)–2/5.3.2).
§ 31.01–5(c)(4)	None	(IMO Res. A.521(13)–2/6.2.3).
§ 31.01–5(c)(5)	None	None.
§ 31.01–5(c)(6)	§ 31.01–5(a)	None.
§ 31.01–5(c)(7)	None	(IMO Res. A.521(13)–2/3.1).
§ 31.05–1(a)	§ 31.05–1(a)	None.
§ 31.10–15(d)	§ 33.01–1	Chap. I, Reg. 8.
§ 31.10–15(d)(1)	§ 33.25–20(c)	None.
§ 31.10–15(d)(2)	§ 33.01–27	None.
§ 31.10–15(d)(3)	§ 33.01–27	None.
§ 31.10–15(d)(4)	§ 31.10–15(b)	None.
§ 31.10–15(d)(5)	§ 31.10–15(b)	None.
§ 31.10–15(d)(6)	§ 31.10–15(b)	None.
§ 31.10–15(d)(7)	§ 31.10–15(b)	None.
§ 31.10–15(d)(8)	§ 31.10–15(b)	None.
§ 31.10–15(d)(9)	§ 31.10–15(b)	None.
§ 31.10–15(d)(10)	§ 31.10–15(b)	None.
§ 31.10–15(d)(11)	§ 33.35–10, 33.37–10	None.
§ 31.10–15(d)(12)	§ 31.10–15(b)	None.
§ 31.10–15(d)(13)	§ 31.10–15(b)	None.
§ 31.10–15(d)(14)	§ 31.10–15(b)	None.
§ 31.10–15(d)(15)	§ 33.40–1(c)(2), 33.45–1, 33.45–5, 33.55–1(d)	30.3
§ 31.10–15(d)(16)	§ 35.10–5(h)	None.
§ 35.07–10(b)	§ 35.07–10(b)	18.5.
§ 35.10–1(a)	None	18.2, 51.
§ 35.10–1(b)	§ 35.10–5(d), 35.10–5(e)	18.3.
§ 35.10–1(c)	§ 35.10–6	None.
§ 35.10–1(d)	None	18.4.
§ 35.10–1(e)	§ 35.10–5(f)	18.5.
§ 35.10–2	§ 35.10–5(d), 35.10–5(e)	18.
§ 35.10–3	§ 35.10–1(c)	None.
§ 35.10–4	§ 35.10–3	None..
§ 35.10–5	§ 35.10–5(a), 35.10–5(b), 35.10–5(c)	None.
§ 35.11–1	None	3.1.
§ 35.11–5	§ 33.30	10.
§ 35.40–19	§ 35.40–40(a)	None.
§ 35.40–40(a)	§ 33.25–5(a), 33.25–5(b), 35.40–40	41.9.2.
§ 35.40–40(b)	§ 33.25–5(b)	41.9.1.
§ 35.40–40(c)	§ 33.25–5(a), 33.25–5(b)	41.9.3.
§ 35.40–40(d)	None	None.
§ 35.40–40(e)	None	1.6, 30.1.
§ 35.40–43	§ 33.25–10(a), 35.40–40	40.7.
§ 35.40–45	§ 33.25–10(b)	None.
§ 35.40–48	§ 35.40–40	None.
§ 35.40–50(a)	§ 35.40–40(a)	7.1.4.
§ 35.40–50(b)	None	7.2.2.
§ 35.40–50(c)	§ 35.40–40(b)	7.1.4.
§ 35.40–50(d)	§ 33.40–15(a)	None.
§ 35.40–50(e)	§ 33.35–25	1.6, 30.2.7.
§ 35.40–50(f)	None	1.6, 30.1.
§ 35.40–55	§ 35.40–40(a)	None.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 35.90–20	§ 33.01–15, 33.15–1(c), 33.20–10, 33.25–20	19.2.
§ 35.90–30(a)	None	19.3.1.
§ 35.90–30(b)	None	None.
§ 35.90–30(c)	None	19.1.
§ 35.90–30(d)	None	19.3.2.
§ 35.90–30(e)	§ 33.25–15(b)	None.
§ 35.90–30(f)	§ 33.01–20	None.
§ 35.90–30(g)	§ 33.01–20	None.
§ 35.90–30(h)	§ 33.01–20	None.
§ 35.90–40	§ 33.25–20(d)	19.4.
§ 35.90–50	None	19.5.
§ 35.90–60(a)	§ 35.10–5(d)	19.6.
§ 35.90–60(b)	§ 35.10–5(e)(3)	19.6.
§ 35.90–60(c)	None	19.6.
§ 35.90–60(d)	§ 35.10–20(a)	None.
§ 35.90–60(e)	§ 35.10–20(b)	None.
§ 35.90–70(a)	§ 35.10–5(d)	19.7.
§ 35.90–70(b)	§ 35.10–25(a)	19.7.
§ 35.90–73	§ 35.10–7	None.
§ 35.90–75(a)	§ 33.25–15(a)	None.
§ 35.90–75(b)	§ 33.25–15(c)	None.
§ 35.90–75(c)	§ 33.15–10(ff), 33.15–10(gg), 33.15–10(hh), 33.15–10(jj), 33.15–20(i), 33.40–1(c)(2), 33.45–1, 33.45–5, 33.55–1(d), 35.10–30.	30.3.
§ 35.90–75(d)	§ 35.10–25(b), 35.10–30(b)	30.3.
§ 35.90–75(e)	§ 33.15–10(j)	30.3.
§ 35.90–75(f)	None	19.2.
§ 35.90–80	§ 33.25–15(d)	19.8.
§ 35.90–90	§ 33.25–15(e)	19.9.
§ 70.03–1	None	None.
§ 70.10–43	§ 70.10–43	3.16.
§ 70.27–1	None	None.
§ 71.20–20(a)(1)	§ 71.20–20(a)(1), 75.35–5(a), 75.37–5(a), 192.35–5(a)	Chap. I, Reg. 7.
§ 71.20–20(a)(1)(i)	§ 75.35–5(b), 75.37–5(b), 75.37–5(c), 192.35–5(b).	(IMO Res. A.521(13)–2/5.3.1, 6.1.2, 6.1.3, 6.1.4, 6.2.1, 6.2.2, 6.2.4).
§ 71.20–20(a)(1)(ii)	None	(IMO Res. A.521(13)–2/5.3.2).
§ 71.20–20(a)(1)(iii)	None	(IMO Res. A.521(13)–2/6.2.3).
§ 71.20–20(a)(1)(iv)	None	None.
§ 71.20–20(a)(1)(v)	None	None.
§ 71.20–20(a)(1)(vi)	None	(IMO Res. A.521(13)–2/3.1).
§ 71.25–15(a)	§ 71.25–15(a)	Chap. I, Reg. 7.
§ 71.25–15(a)(1)	§ 71.25–15(a)(1)	None .
§ 71.25–15(a)(2)	§ 71.25–15(a)(5), 71.25–15(a)(7)	None .
§ 71.25–15(a)(3)	§ 71.25–15(a)(2)	None .
§ 71.25–15(a)(4)	§ 75.37–5(b)	None .
§ 71.25–15(a)(5)	§ 71.25–15(a)(3), 71.25–15(b)	None .
§ 71.25–15(a)(6)	§ 71.25–15(a)(4)	None.
§ 71.25–15(a)(7)	None	None.
§ 71.25–15(a)(8)	§ 71.25–15(a)(9)	None.
§ 71.25–15(a)(9)	§ 71.25–15(a)(8), 75.20–15(hh), 75.20–15(ii), 75.20–15(jj), 75.20–15(ll), 75.20–25(m), 75.20–25(n), 75.43–5(c)(2), 75.45–5(a), 75.90–5(d), 75.90–10(a), 78.17–85(b), 78.17–90, 192.20–25(m), 192.20–25(n), 192.43–5(c)(2), 192.45–5(a), 192.60–5(b), 192.60–10(b), 196.15–65(b), 196.15–70.	30.3.
§ 71.25–15(a)(10)	None	None.
§ 78.13–1	§ 78.13–10, 196.13–10	None.
§ 78.14–1	None	3.1.
§ 78.14–5	§ 78.14, 196.14	10.
§ 78.17–50(a)	None	18.2, 51.
§ 78.17–50(b)	§ 78.17–50(a), 78.17–50(b), 78.17–50(c), 196.15–35(a), 196.15–35(b)	18.3, 25.
§ 78.17–50(c)	§ 78.17–52	None.
§ 78.17–50(d)	None	None.
§ 78.17–50(e)	§ 78.13–20, 196.13–20	18.4.
§ 78.17–50(f)	§ 78.17–50(d), 196.15–35(c)	18.5.
§ 78.17–55	§ 78.17–50(a), 78.17–50(b), 78.17–50(d)	18.
§ 78.37–5(a)	§ 78.37–5(a)	18.5.
§ 78.47–60(a)	§ 75.15–15, 78.47–60(a), 78.47–60(b), 192.15–15	41.9.2.
§ 78.47–60(b)	§ 78.47–60(c)	41.9.1.
§ 78.47–60(c)	§ 78.47–60(c)	41.9.3.
§ 78.47–60(d)	§ 78.47–60(d)	None.
§ 78.47–60(e)	None	1.6, 30.1.
§ 78.47–62	§ 75.15–15, 78.47–63(a), 78.47–63(b)	40.7.
§ 78.47–63	§ 75.15–15, 78.47–63(c)	None.
§ 78.47–64	75.15–15, 78.47–63(a), 78.47–63(b)	None.
§ 78.47–65(a)	§ 78.47–65	7.1.4.
§ 78.47–65(b)	§ 78.47–50, 78.47–51	7.2.2.
§ 78.47–65(c)	§ 78.47–65	7.1.4.
§ 78.47–65(d)	§ 75.43–15(a)	None.
§ 78.47–65(e)	§ 75.40–35, 192.40–25	1.6, 30.2.7.
§ 78.47–65(f)	None	1.6, 30.1.
§ 78.47–72	§ 78.47–72	None.
§ 78.95–20	§ 75.15–5, 75.20–5(b), 75.45–20, 78.17–60(a), 192.15–5, 192.20–5(b), 192.45–20, 196.15–45(a).	19.2.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 78.95–30	None	
§ 78.95–40	None	19.3.
§ 78.95–50	None	19.4.
§ 78.95–60(a)	§ 78.17–50(b)(7)	19.5.
§ 78.95–60(b)	§ 78.17–60(b), 196.15–45(b)	19.6.
§ 78.95–60(c)	None	19.6.
§ 78.95–60(d)	§ 78.17–70(a), 196.15–50(a)	19.6.
§ 78.95–60(e)	§ 78.17–70(b), 196.15–50(b)	None.
§ 78.95–70(a)	None	None.
§ 78.95–70(b)	§ 78.17–85(a), 196.15–65(a)	19.7.
§ 78.95–73	§ 78.17–55, 196.15–40	19.7.
§ 78.95–75(a)	§ 78.17–60(c), 78.17–60(d), 78.17–60(e), 196.15–45(c), 196.15–45(d)	None.
§ 78.95–75(b)	None	None.
§ 78.95–75(c)	§ 75.20–15(hh), 75.20–15(ii), 75.20–15(jj), 75.20–15(ll), 75.20–25(m), 75.20–25(n), 75.43–5(c)(2), 75.45–5(a), 75.90–5(d), 75.90–10(a), 78.17–90(a), 192.20–25(m), 192.20–25(n), 192.43–5(c)(2), 192.45–5(a), 192.60–5(b), 192.60–10(b), 196.15–70(a).	None. 30.3.
§ 78.95–75(d)	§ 78.17–85(b), 78.17–90(b), 196.15–65(b)	
§ 78.95–75(e)	§ 75.20–15(j)	30.3.
§ 78.95–75(f)	None	30.3.
§ 78.95–80	§ 71.25–15(a)(6), 78.17–60(f), 196.15–45(f)	19.2.
§ 78.95–90	§ 71.25–15(a)(9)	19.8.
§ 90.03–1	None	19.9.
§ 90.27–1	None	None.
§ 91.20–20(a)(1)	§ 91.20–20(a)(1), 94.35–5(a), 192.35–5(a)	None.
§ 91.20–20(a)(1)(i)	§ 94.35–5(b), 192.35–5(b)	Chap. I, Reg. 8.
§ 91.20–20(a)(1)(ii)	None	(IMO Res. A.521(13)–2/5.3.1, 6.1.2, 6.1.3, 6.1.4, 6.2.1, 6.2.2, 6.2.4).
§ 91.20–20(a)(1)(iii)	None	None.
§ 91.20–20(a)(1)(iv)	None	(IMO Res. A.521(13)–2/5.3.2).
§ 91.20–20(a)(1)(v)	None	(IMO Res. A.521(13)–2/6.2.3).
§ 91.20–20(a)(1)(vi)	None	None.
§ 91.20–20(a)(1)(vii)	None	None.
§ 91.25–15(a)	§ 91.25–15, 189.25–15	(IMO Res. A.521(13)–2/3.1).
§ 91.25–15(a)(1)	§ 91.25–15(a)(1), 189.25–15(a)(1)	Chap. I, Reg. 8.
§ 91.25–15(a)(2)	§ 91.25–15(a)(5), 189.25–15(a)(5)	None.
§ 91.25–15(a)(3)	§ 91.25–15(a)(2), 189.25–15(a)(2)	None.
§ 91.25–15(a)(4)	None	None.
§ 91.25–15(a)(5)	None	None.
§ 91.25–15(a)(6)	None	None.
§ 91.25–15(a)(7)	None	None.
§ 91.25–15(a)(8)	None	None.
§ 91.25–15(a)(9)	§ 91.25–15(a)(3), 91.25–15(b), 189.25–15(a)(3), 189.25–15(b)	None.
§ 91.25–15(a)(10)	§ 91.25–15(a)(4), 189.25–15(a)(4)	None.
§ 91.25–15(a)(11)	§ 91.25–15(a)(6), 189.25–15(a)(6)	None.
§ 91.25–15(a)(12)	§ 91.25–15(a)(8), 189.25–15(a)(8)	None.
§ 91.25–15(a)(13)	§ 91.25–15(a)(7), 94.20–15(ff), 94.20–15(gg), 94.20–15(hh), 94.20–15(jj), 94.20–25(m), 94.20–25(n), 94.43–5(c)(2), 94.45–5(a), 94.90–5, 94.90–10, 94.45–5(a), 192.20–25(m), 192.20–25(n), 192.43–5(c)(2), 192.45–5(a), 192.60–5(b), 192.60–10(b).	None. 30.3.
§ 91.25–15(a)(14)	None	
§ 97.13–1	§ 97.13–15, 196.13–15	None.
§ 97.14–1	None	None.
§ 97.14–5	§ 97.14, 196.14	3.1.
§ 97.15–35(a)	None	10.
§ 97.15–35(b)	§ 97.15–35(a), 97.15–35(b), 196.15–35(a), 196.15–35(b)	18.2, 51.
§ 97.15–35(c)	§ 97.15–37, 196.15–37	18.3.
§ 97.15–35(d)	§ 97.13–20, 196.13–20	None.
§ 97.15–35(e)	§ 97.15–35(c), 196.15–35(c)	18.4.
§ 97.15–40	§ 97.15–35(a), 97.15–35(b), 97.15–35(c)	18.5.
§ 97.35–5(a)	§ 97.35–5(a)	18.
§ 97.37–37(a)	§ 94.15–15, 97.37–37(a), 97.37–37(b), 192.15–15	18.5.
§ 97.37–37(b)	§ 97.37–37(c)	41.9.2.
§ 97.37–37(c)	§ 97.37–37(c)	41.9.1.
§ 97.37–37(d)	§ 97.37–37(d)	41.9.3.
§ 97.37–37(e)	None	None.
§ 97.37–39	§ 94.15–15, 97.37–40(a), 97.37–40(b)	1.6, 30.1.
§ 97.37–40	§ 97.37–40(c)	40.7.
§ 97.37–42	§ 94.15–15, 97.37–40(a), 97.37–40(b)	None.
§ 97.37–43(a)	§ 97.37–43(a)	None.
§ 97.37–43(b)	§ 94.40–15(b)	7.1.4.
§ 97.37–43(c)	§ 97.37–43(b)	7.2.2.
§ 97.37–43(d)	§ 94.43–15(a)	7.1.4.
§ 97.37–43(e)	§ 94.40–25, 192.40–25	None.
§ 97.37–43(f)	None	1.6, 30.2.7.
§ 97.37–55	§ 97.37–55	1.6, 30.1.
§ 97.90–20	§ 94.15–5, 94.20–5(b), 94.45–20, 97.15–45(a), 192.15–5, 192.20–5(b), 192.45–20, 196.15–45(a).	None. 19.2.
§ 97.90–30	§ 97.15–45(e), 196.15–45(e)	
§ 97.90–40	None	19.3.
§ 97.90–50	None	19.4. 19.5.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 97.90–60(a)	§ 97.15–35(b)(7), 196.15–35(b)(6)	19.6.
§ 97.90–60(b)	§ 97.15–45(b), 196.15–45(b)	19.6.
§ 97.90–60(c)	None	None.
§ 97.90–60(d)	§ 97.15–50(a), 196.15–50(a)	None.
§ 97.90–60(e)	§ 97.15–50(b), 196.15–50(b)	19.7.
§ 97.90–70(a)	§ 97.15–35(b)(9), 196.15–35(b)(8)	19.7.
§ 97.90–70(b)	§ 97.15–65(a), 196.15–65(a)	None.
§ 97.90–73	§ 97.15–40, 196.15–40	None.
§ 97.90–75(a)	§ 97.15–45(c), 97.15–45(d), 196.15–45(c), 196.15–45(d)	None.
§ 97.90–75(b)	None	30.3.
§ 97.90–75(c)	§ 94.20–15(ff), 94.20–15(gg), 94.20–15(hh), 94.20–15(jj), 94.20–25(m), 94.20–25(n), 94.43–5(c)(2), 94.45–5(a), 94.90–5, 94.90–10, 97.15–70(a), 192.20–25(m), 192.20–25(n), 192.43–5(c)(2), 192.45–5(a), 192.60–5(b), 192.60–10(b), 196.15–70(a).	
§ 97.90–75(d)	§ 97.15–65(b), 97.15–70(b), 196.15–65(b), 196.15–70(b)	30.3.
§ 97.90–75(e)	§ 94.20–15(j)	30.3.
§ 97.90–75(f)	None	19.2.
§ 97.90–80	§ 91.25–15(a)(6), 97.15–45(f), 196.15–45(f)	19.8.
§ 97.90–90	§ 91.25–15(a)(8)	19.9.
§ 107.115	§ 107.115	None.
§ 107.231(a)	§ 107.231(a)	None.
§ 107.231(b)	§ 107.231(b), 107.231(g), 107.231(i)	(IMO Res. A.414(XI)–1.6).
§ 107.231(b)(1)	None	None.
§ 107.231(b)(2)	§ 107.231(h)	None.
§ 107.231(b)(3)	None	None.
§ 107.231(b)(4)	§ 109.225, 109.307(b), 109.317, 109.320(b)	30.3.
§ 107.231(e)	§ 107.231(e)	19.8.1.
§ 107.231(f)	§ 107.231(f)	19.9.
§ 107.231(g)	None	None.
§ 107.231(y)	§ 107.231(y), 107.231(z)	(IMO Res. A.414(XI)–1.6).
§ 107.231(z)	None	None.
§ 107.239(a)	§ 107.239(a), 107.239(b), 107.239(d)	(IMO Res. A.414(XI)–1.6).
§ 107.239(b)	§ 107.239(a)	(IMO Res. A.414(XI)–1.6).
§ 107.239(c)	None	(IMO Res. A.414(XI)–1.6).
§ 107.239(d)	None	(IMO Res. A.414(XI)–1.6).
§ 107.239(e)	§ 107.239(c)	(IMO Res. A.414(XI)–1.6).
§ 107.305(bb)	§ 107.305(bb)	None.
§ 107.305(cc)	§ 107.305(cc)	None.
§ 108.501	None	None.
§ 108.645(a)	§ 108.645(a)	41.9.2.
§ 108.645(b)	§ 108.645(a)	41.9.1.
§ 108.645(c)	None	41.9.3.
§ 108.645(d)	None	None.
§ 108.645(e)	None	1.6, 30.1.
§ 108.646	None	40.7.
§ 108.647	§ 108.647	None.
§ 108.649(a)	§ 108.649(a), 108.649(c)	7.1.4.
§ 108.649(b)	§ 108.649(b)	7.2.2.
§ 108.649(c)	§ 108.649(c)	7.1.4.
§ 108.649(d)	None	None.
§ 108.649(e)	§ 108.514(f)	1.6, 30.2.7.
§ 108.649(f)	None	1.6, 30.1.
§ 108.650	None	None.
§ 109.207(c)	§ 109.320(c)	None.
§ 109.213	§ 109.213	18.
§ 109.215(a)	§ 108.503(g)	18.2, 51.
§ 109.215(b)	§ 109.215, 109.215(a), 109.215(b), 109.215(c), 109.217(a)	18.3.
§ 109.215(c)	§ 109.215(e)	None.
§ 109.215(d)	§ 109.215(d), 109.505(e)	18.4.
§ 109.301	§ 109.217(b), 109.301, 109.305, 109.341(a)	19.2.
§ 109.303	§ 108.503(g), 109.425	19.3.
§ 109.305	None	19.4.
§ 109.307	None	19.5.
§ 109.309	§ 109.217(c), 109.217(f), 109.217(g)	19.6.
§ 109.311(a)	None	19.7.
§ 109.311(b)	§ 109.208	19.7.
§ 109.313	§ 109.221	None.
§ 109.315(a)	§ 109.217(d), 109.217(e)	None.
§ 109.315(b)	None	None.
§ 109.315(c)	§ 109.225(a), 109.317, 109.320(b)	30.3.
§ 109.315(d)	§ 109.225(b), 109.307(b)	30.3.
§ 109.315(e)	None	30.3.
§ 109.315(f)	None	19.2.
§ 109.317	§ 109.219	19.8.
§ 109.319	§ 107.231(f)	19.9.
§ 109.323	§ 109.323, 109.325	10.
§ 109.425	§ 109.425	None.
§ 109.433(d)	§ 109.433(d)	18.5.
§ 109.433(e)	§ 109.433(e)	18.5.
§ 109.503(c)(2)	§ 109.503(c)(2)	None.
§ 112.15–1(c)	§ 112.15–1(c)	11.5.

Proposed regulation	Existing regulation (CFR, title 46)	SOLAS 74/83 regulation (Ch. III, except as noted)
§ 112.15-1(g)	§ 33.20-1(c)(3), 75.70-10, 75.70-15, 94.50-10, 94.50-15, 112.15-1(g), 192.50-10, 192.50-15.	11.4, 15.7.
§ 112.15-5(u)	None	15.9.
§ 160.040-6(a)	§ 160.040-6(a)	None.
§ 160.040-6(b)	§ 160.040-6(a)	30.3.
§ 160.040-6(c)	§ 160.040-6(a)	30.3.
§ 160.040-6(d)	§ 160.040-6(b)	None.
§ 160.040-6(e)	§ 160.040-6(b)	None.
§ 167.03-1	None	None.
§ 167.35-1	§ 167.35-1	None.
§ 167.65-2	§ 167.65-1(c), 167.65-1(d)	18.
§ 168.05-5	§ 168.05-5	None.
§ 188.03-1	None	None.
§ 188.27-1	None	None.
§ 189.20-20(a)(1)	§ 189.20-20(a)(1)	None.
§ 196.15-40	§ 196.15-35(a), 196.15-35(b), 196.15-35(c)	18.
§ 196.35-5(a)	§ 196.35-5(a)	18.5.
§ 196.37-37(a)	§ 196.37-37(a), 196.37-37(b)	41.9.2.
§ 196.37-37(b)	§ 196.37-37(c)	41.9.1.
§ 196.37-37(c)	§ 196.37-37(c)	41.9.3.
§ 196.37-37(d)	§ 196.37-37(d)	None.
§ 196.37-37(e)	None	1.6, 30.1.
§ 196.37-39	§ 196.37-40(a), 196.37-40(b)	40.7.
§ 196.37-40	§ 196.37-40(c)	None.
§ 196.37-42	§ 196.37-40(a), 196.37-40(b)	None.
§ 196.37-43(a)	§ 196.37-43(a)	7.1.4.
§ 196.37-43(b)	None	7.2.2.
§ 196.37-43(c)	§ 196.37-43(b)	7.1.4.
§ 196.37-43(d)	§ 192.43-15(a)	None.
§ 196.37-43(e)	§ 194.40-25	1.6, 30.2.7.
§ 196.37-43(f)	None	1.6, 30.1.
§ 196.37-49	§ 196.37-49	None.
(None required)	None	1.4.4, 1.4.5, 2.2, 4.6, 21.4.3, 27.3.1, 27.3.2.1, 27.3.2.2, 27.3.3.1, 27.3.3.2, 27.3.5, 43.
(No change)	§ 2.75	4.4.
	§ 30.01-6(d), 70.05-10(d), 90.05-10(d), 188.05-10(d)	2.1.
	§ 111.75-16	11.4, 15.7.
	§ 112.15-1(c)	11.5.
(Separate NPRM)	§ 33.40-1, 161.010	27.1.2.
	§ 113.25	6.4.2.
	§ 113.30	6.4.1.
	§ 113.50	6.4.2, 50.
	§ 160	4.1, 4.2, 4.5, 5, 30.2, 51, 52.
	§ 160.002	32.
	§ 160.005	32.
	§ 160.015	48.
	§ 160.017	48.7.
	§ 160.018	38, 40.
	§ 160.022	37.
	§ 160.032	48.
	§ 160.033	41.7.6.
	§ 160.035	41, 42, 44, 45, 46.
	§ 160.036	35.
	§ 160.040	49.
	§ 160.050	31.
	§ 160.051	38, 40.
	§ 160.055	32.
	§ 160.062	38.6.3.
	(§ 160.063)	48.
	(§ 160.069)	47.
	(§ 160.070)	48.
	§ 160.071	33.
	(§ 160.074)	34.
	(§ 160.078)	36.

The existing regulations listed below are to be deleted. No new regulations are proposed and there is no corresponding regulation in SOLAS 74/83.

§ 33.01-25
33.01-30(a)
33.01-30(c)
33.01-30(e)
33.05-3(b)
33.05-3(d)
33.05-5(b)
33.05-15(b)
33.05-20(b)
33.05-25(b)
33.05-25(c)
33.05-25(e)
33.05-30
33.05-35
33.07-5
33.07-10(d)
33.07-15
33.07-20
33.07-25
33.10-1(e)
33.10-10(e)
33.10-10(f)
33.10-10(h)
33.15-10(p)
33.15-10(r)
33.15-10(u)
33.15-10(y)
33.15-10(aa)
33.15-20(e)
33.15-90
33.20-1(b)
33.20-5
33.25-5(d)
33.25-5(e)
33.25-20(e)
33.50
33.55-10(c)
33.55-15
35.10-5(g)
35.10-5(i)
75.05-10
75.10-5(b)(2)
75.10-5(c)
75.10-5(d)
75.10-5(a)(3)
75.10-5(a)(4)
75.10-5(a)(5)
75.10-5(a)(6)
75.10-10(a)(2)
75.10-10(a)(4)
75.10-10(b)(3)
75.10-15(d)
75.10-20(a)(5)
75.15-10(b)(9)
75.15-10(c)(5)
75.15-10(c)(6)
75.15-10(c)(7)
75.15-10(d)
75.20-15(p)
75.20-15(r)
75.20-15(u)
75.20-15(y)
75.20-15(aa)
75.20-25(d)
75.20-25(h)
75.20-25(o)

75.20–30
75.20–35
75.25–5(e)
75.27–5(e)
75.30–10(c)
75.33–5(e)
75.33–10(e)
75.33–15
75.35–1
75.37–1
75.45–25
78.14–1
78.17–40(a)(3)
78.17–50(e)
78.47–60(e)
78.47–60(f)
78.87–10
94.01–1
94.05–10
94.10–1(c)
94.10–1(d)
94.10–5(a)(3)
94.10–5(a)(4)
94.10–5(c)
94.10–5(d)
94.10–10(c)
94.10–20(a)
94.10–20(c)
94.10–25
94.10–40(c)
94.10–50
94.15–10(c)(1)
94.15–10(c)(2)
94.20–15(p)
94.20–15(r)
94.20–15(u)
94.20–15(y)
94.20–15(aa)
94.20–25(d)
94.20–25(h)
94.20–25(o)
94.25–5(e)
94.30–10(c)
94.33–5(e)
94.33–10(e)
94.33–15
94.45–25
94.45–90
97.15–25(a)(3)
97.15–35(d)
97.37–37(e)
97.37–37(f)
108.501
108.507(a)(1)
108.508(e)
108.645(b)
108.645(c)
167.35–2
167.35–3
167.35–5
167.35–10
167.35–15
167.35–20
167.35–25
167.35–30
167.35–35
167.35–40
167.35–45
167.35–50
167.35–60
167.35–65
167.35–70
167.35–72
167.35–75
167.35–80
167.35–85
167.35–90
167.55–5(j)
167.65–1
167.65–50
167.65–55
189.25–15
192.05–10
192.10–5(a)(3)
192.10–5(a)(4)
192.10–5(c)
192.10–5(d)
192.10–10(c)
192.10–40(c)
192.15–10(c)(1)
192.15–10(c)(2)
192.20–15(p)
192.20–15(r)
192.20–15(u)
192.20–15(y)
192.20–15(aa)
192.20–25(d)
192.20–25(h)
192.20–25(o)
192.25–5(e)
192.30–10(c)
192.33–5(e)
192.33–10(e)
192.33–15
192.45–25
192.45–90
196.15–25(a)(3)
196.15–35(d)
196.37–37(e)
196.37–37(f)

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 33

Cargo vessels, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 75

Marine safety, Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 94

Cargo vessels, Marine safety.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 112

Vessels.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Marine safety, Incorporation by reference, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 192

Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

In consideration of the foregoing, it is proposed that Chapter I, Title 46, Code of Federal Regulations be amended as follows:

1. By adding Subchapter W to read as follows:

SUBCHAPTER W—LIFESAVING APPLIANCES AND ARRANGEMENTS

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

Subpart A—General

Sec.

199.5 Incorporation by reference.
199.7 Transitional provisions.
199.10 Application.
199.15 Requirements for vessels built before July 1, 1986.
199.25 Additional requirements.
199.30 Definitions.
199.40 Equivalent and novel lifesaving appliances and arrangements.

Subpart B—Requirements for All Vessels

199.62 Survival craft portable two way radiotelephone equipment: ocean, short international voyage, coastwise, or Great Lakes services.
199.64 Emergency Position Indicating Radiobeacons (EPIRB) and Search and Rescue Transponders (SART).
199.66 Portable radio apparatus for survival craft: international voyage.
199.68 Distress flares.
199.70 Ring life buoys.
199.72 Lifejackets.

Sec.
199.73 Rescue boat immersion suits: ocean, short international voyage, coastwise, or Great Lakes service.
199.75 Lights for lifejackets and immersion suits: ocean, short international voyage, coastwise, or Great Lakes service.
199.76 Whistles for lifejackets and immersion suits: ocean or short international voyage service.
199.78 Stowage of lifejackets and immersion suits.
199.80 Station bill (muster list) and emergency instructions.
199.90 Operating instructions.
199.110 Survival craft muster and embarkation arrangements.
199.120 Launching stations.
199.130 Stowage of survival craft.
199.133 Stowage of lifeboats.
199.135 Stowage of liferafts and inflatable buoyant apparatus.
199.137 Stowage of life floats and buoyant apparatus.
199.140 Stowage of rescue boats.
199.150 Survival craft launching and recovery arrangements: general.
199.153 Survival craft launching and recovery arrangements using falls and a winch.
199.155 Survival craft launching and recovery arrangements: other devices.
199.157 Lifeboat launching and recovery arrangements.
199.160 Rescue boat embarkation, launching and recovery arrangements.
199.170 Line-throwing appliance: ocean, short international voyage, or coastwise service.
199.175 Survival craft and rescue boat equipment.

Subpart C—Additional Requirements for Passenger Vessels

199.200 General.
199.201 Survival craft.
199.202 Rescue boats.
199.203 Marshalling of liferafts.
199.211 Ring life buoys.
199.212 Lifejackets: ocean or short international voyage service.
199.213 Lifejacket lights; ferries.
199.214 Immersion suits and thermal protective aids; ocean, short international voyage, coastwise, or Great Lakes service.
199.217 Station bill (muster list.)
199.220 Survival craft and rescue boat embarkation arrangements.
199.230 Stowage of survival craft.
199.240 Muster stations.
199.245 Survival craft embarkation and launching arrangements.
199.250 Fixed radio installation for lifeboats: international voyage.

Subpart D—Additional Requirements for Cargo Vessels

199.260 General.
199.261 Survival craft.
199.262 Rescue boats.
199.271 Ring life buoys.
199.272 Lifejackets
199.273 Immersion suits: ocean, coastwise, or Great Lakes service.
Sec.
199.280 Survival craft embarkation and launching arrangements: ocean, coastwise, or Great Lakes service.
199.290 Stowage of survival craft.

Subpart E—Additional Requirements for Tank Vessels

199.300 General.
199.310 Survival craft.
199.320 Survival craft embarkation and launching arrangements: ocean, coastwise, or Great Lakes service.

Subpart F—Additional Requirements for Special Purpose Ships

199.400 General
199.405 Lifesaving appliance requirements.
199.410 Rescue boats: special purpose ships operating on the continental shelf of the United States.

Subpart G—Additional Requirements for Nautical School Ships

199.500 General.
199.505 Lifesaving appliance requirements.

Subpart H—Additional Requirements for Mobile Offshore Drilling Units

199.600 General
199.605 Survival craft.
199.610 Rescue boats.
199.630 Ring life buoys.
199.640 Immersion suits.
199.645 Station bill.
199.650 Survival craft embarkation and launching arrangements.

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

Subpart A—General

§ 199.5 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G-MVI), 2100 Second Street, SW., Washington, DC 20593—0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103
ASTM F1003, Standard Specification for Searchlights on Motor Lifeboats, 1986.....199.175
ASTM F1014, Standard Specification for Flashlights on Vessels, 1986.....199.175

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England
Resolution A.181(VI), "Instructions on Survival in Liferafts", October 28, 1969.....199.175
Resolution A.216(VII), "Instructions for Action in Survival Craft", October 12, 1971.....199.175
Resolution A.520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements", November 1983.....199.40
Resolution A.603(15), "Symbols Related to Life-saving Appliances and Arrangements", November 1987.....199.90
Resolution A.604(15), "Performance Standards for Survival Craft Radar Transponder for Use in Search and Rescue Operations", November 1987.....199.64
Resolution A.605(15), "Performance Standards for Survival Craft Two-way VHF Radiotelephone Apparatus", November 1987.....199.62
1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74/83)...199.7; 199.30; 199.68; 199.70; 199.72; 199.75; 199.110; 199.135; 199.150; 199.153; 199.175; 199.201; 199.202; 199.261; 199.262; 199.310; 199.605; 199.610
Resolution MSC.4(48), "International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk" (IBC Code), 1983.....199.320
Resolution MSC.5(48), "International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk" (IGC Code), 1983.....199.320
International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol related thereto (MARPOL 73/78).....199.320

§ 199.7 Transitional provisions.

This subchapter is based in part on Chapter III, "Life-saving Appliances and Arrangements" of SOLAS 74/83. The Coast Guard approves some lifesaving appliances under subparts of Subchapter Q of this chapter that have not been revised to meet SOLAS 74/83. This subchapter requires those appliances to meet both Subchapter Q and SOLAS 74/83. Where the requirements conflict, SOLAS 74/83 takes precedence. Until revisions to Subchapter Q are published, the Commandant (G-MVI) will provide guidance on the approval requirements for these appliances.

§ 199.10 Application.

(a) A nonself-propelled vessel without accommodations or work stations on board is not required to carry lifesaving appliances meeting this subchapter. This subchapter contains requirements for lifesaving appliances and arrangements on the following self-propelled vessels

and nonself-propelled vessels with accommodations or work stations:

(1) Each tank vessel required to meet Subchapter D of this chapter.

(2) Each cargo and miscellaneous vessel required to meet Subchapter I of this chapter. For the purposes of this subchapter, the term "cargo vessel" also includes each miscellaneous vessel under Subchapter I.

(3) Each mobile offshore drilling unit required to meet Subchapter I–A of this chapter.

(4) Each passenger vessel required to meet Subchapter H of this chapter.

(5) Each offshore supply vessel required to meet Subchapter L of this chapter (proposed, 48 FR 6636).

(6) Each nautical school ship required to meet Subchapter R of this chapter.

(7) Each oceanographic research vessel required to meet Subchapter U of this chapter.

(b) Each section of this subchapter applies to each vessel in each service listed in this paragraph unless otherwise stated in the section. Each vessel that complies with the lifesaving requirements in a section of this subchapter for a particular service is considered to meet the requirements for each service that follows it in the following list. The services are:

(1) Ocean (including international voyage).

(2) Short international voyage (passenger vessels only).

(3) Coastwise.

(4) Great Lakes.

(5) Lakes, bays, and sounds.

(6) Rivers.

(c) For the purposes of this subchapter—

(1) "similar stage of construction" means the stage at which—

(i) construction identifiable with a specific vessel begins; and

(ii) assembly of that vessel comprising at least 50 metric tons (55.1 U.S. tons) or 1% of the estimated mass of all structural material, whichever is less, has been achieved; and

(2) "vessel constructed" means "vessel the keel of which is laid or which is at a similar stage of construction".

(d) For the purposes of this subchapter, a vessel converted to a passenger vessel must be treated as a passenger vessel constructed on the date when the conversion begins.

(e) Subject to § 199.15, each vessel constructed before July 1, 1986 must meet this subchapter except for—

(1) The number, type, and arrangement of lifeboats, lifeboat davits, winches, inflatable liferafts, liferaft launching equipment, rescue boats, life floats, and buoyant apparatus;

(2) Two-way radiotelephone apparatus under § 199.62;

(3) Emergency Position Indicating Radio Beacons (EPIRB) and Search and Rescue Transponders (SART) for survival craft under § 199.64(b) and § 199.175(c)(12); and

(4) Immersion suits under § 199.214 for a vessel required to meet Subpart C of this subchapter.

(f) Each item of lifesaving equipment carried on board the vessel in addition to equipment of the type required under this part, must—

(1) Be approved by the Commandant (G–MVI); or

(2) Be acceptable to the cognizant Officer in Charge of Marine Inspection (OCMI) for use on the vessel.

§ 199.15 Requirements for vessels built before July 1, 1986.

This section applies to each vessel built before July 1, 1986 that does not meet the applicable requirements in Subparts B through H of this subchapter.

(a) The number, type, and arrangement of lifeboats, lifeboat davits, winches, inflatable liferafts, liferaft launching equipment, rescue boats, life floats, and buoyant apparatus must be as required for the vessel on June 30, 1986, as long as the arrangement or equipment is continued in use on the vessel.

(b) When any lifesaving appliance or arrangement on a vessel is replaced or a vessel undergoes repairs, alterations or modifications of a major character involving replacement of, or any addition to, the existing lifesaving appliances or arrangements, each new lifesaving appliance and arrangement must meet this subchapter, unless the vessel can not accommodate the new appliance or arrangement.

(1) A survival craft is not required to meet this subchapter if it is replaced without replacing its davit and winch.

(2) A davit and its winch are not required to meet this subchapter if one or both are replaced without replacing the survival craft.

(c) On or before July 1, 1991, each vessel in ocean, short international voyage, coastwise, or Great Lakes service, must have survival craft portable two-way radiotelephone apparatus meeting § 199.62.

(d) On or before July 1, 1991, each vessel of a type required to meet Subpart C of this subchapter in ocean, short international voyage, coastwise, or Great Lakes service, must have immersion suits and thermal protective aids meeting § 199.214.

(e) On or before July 1, 1991, each vessel of a type required to meet Subpart D of this subchapter in ocean or coastwise service, must have liferafts meeting § 199.261(b)(2), § 199.261(h), and § 199.290(b).

(f) On or before July 1, 1991, each vessel equipped with a liferaft not served by a launching appliance, and each vessel equipped with an inflatable buoyant apparatus, must have rail or bulwark openings or mounting arrangements meeting § 199.135(c).

(g) On or before July 1, 1991, each set of lifeboat davits on a vessel of a type required to meet Subpart D of this subchapter in ocean, coastwise, or Great Lakes service, must be gravity type davits with a winch. For open lifeboats, boarding of the lifeboat in the stowed position is not required.

(h) On or before July 1, 2001, each lifeboat on a vessel of a type required to meet Subpart D of this subchapter in ocean, coastwise, or Great Lakes service, must be a totally enclosed lifeboat.

(i) After July 1, 1991, each new lifeboat for a tank ship certificated to carry crude, product, chemicals, or liquified gases; having a flashpoint less than 60° C (closed cup test), must not be of aluminum construction in the hull or canopy.

(j) On or before April 1, 1991, each mobile offshore drilling unit (MODU) required to meet Subpart H of this subchapter must either have—

(1) Lifeboats and liferafts that meet § 199.605(b); or

(2) Totally enclosed fire-protected lifeboats of sufficient capacity to accommodate 100% of the persons permitted on board, plus additional totally enclosed lifeboats or davit-launched liferafts of sufficient capacity to accommodate 100% of the persons permitted on board the unit.

(i) An open lifeboat may be used instead of davit-launched liferafts as long as it is in good working order. An open lifeboat requiring extensive repairs must be replaced with either a totally enclosed fire-protected lifeboat, or davit-launched liferafts.

(ii) A submersible MODU constructed before January 3, 1979 may continue to use the lifesaving arrangements described on its Certificate of Inspection in effect on [insert effective date].

(k) On or before July 1, 1991, each passenger ferry, and each other passenger vessel on ocean, short international voyage, or coastwise service, must have the number of lifeboats, liferafts, and inflatable buoyant apparatus meeting § 199.201.

(l) On or before July 1, 1991, each lifeboat on a vessel must be propelled—

(1) Either by motor or by a hand-propelling gear meeting Subpart 160.034

of this chapter if the lifeboat has a capacity of at least 60 persons, but less than 100 persons; or

(2) By motor if the lifeboat has a capacity of 100 persons or more.

(m) A lifesaving appliance required under this section and in use on a vessel before July 1, 1991 is not required to comply fully with this subchapter as long as it—

(1) Is Coast Guard approved;

(2) Meets the requirements for the vessel in effect before [insert effective date]; and

(3) Is maintained in good and serviceable condition.

§ 199.25 Additional requirements.

The Officer in Charge, Marine Inspection (OCMI) may require a vessel to carry specialized or additional lifesaving equipment if,—

(a) the OCMI determines the conditions of the voyage render the requirements of this subchapter inadequate; or

(b) the vessel is operated in Arctic, Antarctic, or other severe conditions not covered under this subchapter.

§ 199.30 Definitions.

Each term defined elsewhere in this chapter for a particular class of vessel applies to this subchapter unless a different definition is given in this section.

"Accommodation" means a cabin or other covered or enclosed place intended to carry persons. Each place where passengers are carried is considered an accommodation, whether or not it is covered or enclosed.

"Embarkation station" means the place where a survival craft is boarded.

"Fleet angle" for a wire rope leading to a winch drum means the angle included between an imaginary line from the lead sheave perpendicular to the axis of the drum and the line formed by the wire rope when led from the lead sheave to either extremity of the drum.

"Float-free" launching means that method of launching a lifesaving appliance whereby the appliance is automatically released from a sinking vessel and is ready for use. In the case of an inflatable lifesaving appliance, inflation takes place automatically.

"Free-fall" launching means that method of launching a survival craft whereby the craft with its complement of persons and equipment on board is released and allowed to fall into the water without any restraining apparatus.

"Immersion suit" means a device approved by the Commandant (G–MVI) under Subpart 160.171 of this chapter. Except for a vessel on an international voyage constructed on or after July 1, 1986,—

(a) An exposure suit approved under former Subpart 160.071 of this chapter is an immersion suit for the purposes of this subchapter, and

(b) An unapproved suit in use on the vessel before November 1, 1980 is accepted for use on that vessel in place of an immersion suit if—

(1) It is similar or identical to an approved suit; and

(2) It is in serviceable condition.

"Inflatable" appliance means one that depends upon non-rigid, gas filled chambers for buoyancy and that is normally kept uninflated until ready for use.

"Inflated" appliance means one that depends upon non-rigid, gas filled chambers for buoyancy and that is kept inflated and ready for use at all times.

"Launching appliance" or "launching arrangement" means a device or devices for safely transferring a survival craft or rescue boat from its stowed position to the water. For a launching arrangement using a davit, the term includes the davit, winch and falls.

"Length" means the load line length defined in § 42.13–15(a) of this chapter.

"Lifejacket", for the purposes of this subchapter, means a flotation device approved by the Commandant (G–MVI) as—

(a) A "life preserver"; or

(b) As meeting Regulations III/30.2 and III/32.1 of SOLAS 74/83.

"Marine escape slide" means a device which includes an inflatable escape slide and an inflatable boarding platform. The device allows survivors to abandon the ship by sliding from the embarkation deck down to the boarding platform floating on the water. Survival craft are then boarded from the boarding platform. Although it does not transfer a survival craft from the stowed position to the water, a marine escape slide is considered to be a "launching appliance" for the purposes of this subchapter.

"Molded depth" is defined in § 42.13–15(e) of this chapter.

"Muster station" means the place where the crew and passengers assemble before boarding a survival craft.

"Novel" lifesaving appliance or arrangement means one that has new features not fully covered by the provisions of this subchapter but providing an equal or higher standard of safety.

"Retrieval" means the safe recovery of survivors.

"Seagoing condition" means the operating condition of the vessel with the personnel, equipment, fluids and ballast necessary for safe operation on the waters where the vessel operates. For bottom-bearing mobile offshore drilling units, the term also applies in the bottom-bearing mode, but the "lightest seagoing condition" is considered to be the highest anticipated operating condition.

"Survival craft" means a craft capable of sustaining the lives of persons in distress after abandoning the vessel on which they were carried. The term includes lifeboats, liferafts, buoyant apparatus, and life floats, but does not include rescue boats.

"Toxic vapor or gas" means a product for which emergency escape respiratory protection is required under subchapter 17 of the International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (IBC Code), and in subchapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (IGC Code).

§ 199.40 Equivalent and novel lifesaving appliances and arrangements.

(a) Where this subchapter requires a particular lifesaving appliance or arrangement, the Commandant (G–MVI) may accept any other appliance or arrangement that is at least as effective as that specified. If necessary, the Commandant (G–MVI) may require engineering evaluations and tests to demonstrate the equivalence of the substitute appliance or arrangement.

(b) The Commandant (G–MVI) may approve a novel lifesaving appliance or arrangement, if it has performance characteristics at least equivalent to the appliance or arrangement required under this subchapter, and—

(1) Is evaluated and tested under IMO Resolution A.520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements"; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

Subpart B—Requirements for All Vessels

§ 199.62 Survival craft portable two-way radiotelephone equipment: ocean, short international voyage, coastwise, or Great Lakes services.

This section applies to each vessel in ocean, short international voyage, coastwise, or Great Lakes service, which is equipped with lifeboats, liferafts, or inflatable buoyant apparatus.

(a) Each vessel must have survival craft portable two-way radiotelephone equipment meeting the regulations of the Federal Communications Commission at 47 CFR 80.271 and IMO Resolution A.605(15). Each radio must operate on 156.3 MHz (channel 6), and 156.8 MHz (channel 16).

(b) A radio for each survival craft is not required; however, at least three such radios must be on each vessel.

(c) Other transceivers used on board the vessel that are not incompatible with the appropriate requirements of the Federal Communications Commission are acceptable to meet this requirement.

§ 199.64 Emergency Position Indicating Radiobeacons (EPIRB) and Search and Rescue Transponders (SART).

(a) *Ocean, short international voyage, coastwise, or Great Lakes services.* Each vessel in ocean, short international voyage, coastwise, or Great Lakes service, except as provided under paragraph (c), (d), or (e) of this section, must have on each side of the vessel, a Category 1, float-free, automatically activated, 406 MHz Satellite Emergency Position Indicating Radio Beacon (EPIRB) meeting Federal Communications Commission (FCC) regulations at 47 CFR 80.1061 (See 53 FR 37308 of September 26, 1988), stowed where it—

(1) Is readily accessible for testing and use; and

(2) Will not be obstructed when it floats free of the vessel.

(b) *Ocean, short international voyage, or coastwise services.* (1) Unless each liferaft on the vessel is equipped with a Class S EPIRB, a Category 2 Satellite EPIRB, or a Search and Rescue Transponder (SART), each vessel in ocean, short international voyage, or coastwise service, must have

(i) Two Class S EPIRBs which meet the FCC regulations at 47 CFR 80.1059,

(ii) Two Category 1 or Category 2 Satellite EPIRBs which meet FCC regulations at 47 CFR 80.1061, or (See 53 FR 37308, of September 26, 1988)

(iii) Two SARTs which meet the FCC regulations at 47 CFR 80.375(e) and IMO Resolution A.604(15).

(2) Each EPIRB or SART must be installed—

(i) In a weathertight enclosure;

(ii) One on each side of the vessel;

(iii) In a readily accessible location;

(iv) If the vessel has two or more widely separated deckhouses, at separate deckhouses; and

(v) At or near a liferaft embarkation station.

(3) The Category 1 Satellite EPIRBs required under paragraph (a) of this section may be considered to meet the requirement in paragraph (b)(1) of this section, if their installation meets paragraphs (b)(2)(iii), (b)(2)(iv), and (b)(2)(v) of this section.

(c) *Alternative: nonself-propelled vessels.* An EPIRB is not required on a nonself-propelled vessel if the vessel is normally—

(1) under tow;

(2) moored to or alongside a mobile offshore drilling unit or self-propelled vessel; or

(3) moored to shore.

(d) *Alternative: Class A EPIRBs installed on or before [insert effective date].* Until [insert date 6 years after effective date], a Coast Guard approved Class A EPIRB may be used to meet the requirement for an EPIRB under paragraph (a) of this section. Each Class A EPIRB carried under this paragraph must have been installed on the vessel on or before [insert effective date]. Each Class A EPIRB replaced after [insert effective date] must be replaced with an EPIRB meeting § 199.64(a).

(e) *Alternative: Class C EPIRBs installed on Great Lakes vessels on or before [insert effective date].* Until [insert date 6 years after effective date], two Class C EPIRBs may be used to meet the requirement for an EPIRB on vessels in Great Lakes service under paragraph (a) of this section. Each Class C EPIRB carried under this paragraph must have been installed on the vessel on or before [insert effective date]. Each Class C EPIRB replaced after [insert effective date] must be replaced with an EPIRB meeting § 199.64(a). Class C EPIRBs carried under this paragraph must be installed—

(1) Each in a weathertight enclosure;

(2) Each in a readily accessible location;

(3) One on each side of the vessel;

(4) If the vessel has two or more widely separated deckhouses, at separate deckhouses; and

(5) Each at or near a principal embarkation station.

§ 199.66 Portable radio apparatus for survival craft: international voyage.

Except as specified under paragraphs (a) and (b) of this section, each vessel on an international voyage carrying a Class A EPIRB as an alternative to a Category 1, 406 MHz Satellite EPIRB, must have a portable radio apparatus Type Approved by the FCC.

(a) The portable radio apparatus is not required if a fixed radio installation meeting the regulations of the Federal Communications Commission is fitted in a lifeboat on each side of the vessel or in a stern-launched lifeboat under § 199.261(c).

(b) The OCMI may exempt a vessel from the requirement to carry a portable radio apparatus on voyages of such duration that the apparatus is unnecessary.

(c) The portable radio apparatus must be stowed—

(1) in a protected and easily accessible position ready to be moved to any survival craft in an emergency; or

(2) in the case of a vessel with lifeboats in widely separated positions fore and aft, the portable radio apparatus must be stowed in the vicinity of the lifeboats farthest away from the vessel's main transmitter.

(d) Each totally enclosed lifeboat on a vessel carrying a portable radio apparatus must be equipped with a collapsible rod antenna meeting the regulations of the Federal Communications Commission at 47 CFR 80.265(e)(2). The boat must also have mounting arrangements to hold the antenna in its operating position.

§ 199.68 Distress flares.

(a) *Ocean, short international voyage, or coastwise service.* This paragraph applies to each vessel in ocean, short international voyage, or coastwise service, except for vessels of less than 150 tons gross tonnage and not carrying passengers, persons in addition to the crew, or offshore workers.

(1) Each vessel must carry not less than 12 rocket parachute flares approved by the Commandant (G–MVI) as meeting Subpart 160.036 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/35 of SOLAS 74/83.

(2) A vessel less than 150 tons gross tonnage that is not a passenger vessel, but carries passengers, persons in addition to the crew, or offshore workers, is not required to meet paragraph (a)(1) of this section if it carries six hand red flare distress signals approved under Subpart 160.021 of this chapter, and six hand orange smoke distress signals approved under Subpart 160.037 of this chapter.

(b) *Great Lakes service.* Each vessel of 150 tons gross tonnage and over in Great Lakes service must carry not less than 12 hand red flare distress signals approved under Subpart 160.021 of this chapter.

(c) *Exemption: vessels on short runs.* Vessels operating on short runs limited to approximately 30 minutes away from the dock are not required to carry distress flares under this section.

(d) *Stowage.* Each flare carried to meet this section must be stowed in one of the following:

(1) A portable watertight container carried within the pilothouse or on the navigating bridge. An acceptable watertight container is described in § 160.021–6 of this chapter.

(2) A portable magazine chest secured above the freeboard deck, away from heat, in the vicinity of the pilothouse or navigating bridge. An acceptable magazine chest is described in Subpart 160.038 of this chapter.

§ 199.70 Ring life buoys.

(a) *General.* Each vessel must have two or more ring life buoys.

(1) Each ring life buoy on a vessel must—

(i) Be approved under Subpart 160.050 of this chapter;

(ii) Be of the 800 mm (30 in.) size;

(iii) Be readily accessible;

(iv) Be stowed in a way that it can be rapidly cast loose; and

(v) Not be permanently secured in any way.

(2) At least one ring life buoy on each side of the vessel must be fitted with a buoyant lifeline. The lifeline must—

(i) Be at least as long as twice the height where it is stowed above the waterline in the lightest seagoing condition, or 30 m (100 ft.), whichever is the greater;

(ii) Be non-kinking;

(iii) Have a diameter of not less than 8 mm (5/16 in.);

(iv) Have a breaking strength of not less than 5 kN (1,124 lb.); and

(v) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light.

(3) Not less than one-half of the total number of ring life buoys, but at least two, must each have a water light approved by the Commandant (G–MVI) as meeting Subpart 161.010 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/31.2 of SOLAS 74/83. The ring life buoys with a water light, including any with a self-activating smoke signal under paragraph (c) of this section—

(i) Must have a lanyard between 1 m (39 in.) and 2 m (78 in.) long securing the water light to the ring life buoy;

(ii) Must be equally distributed on both sides of the vessel; and

(iii) Unless the vessel carries less than four ring life buoys, must not be the ring life buoys with lifelines under paragraph (a)(2) of this section.

(b) *Self-propelled vessels: all services.* On each self-propelled vessel, one or more ring life buoys must be readily available—

(1) On each side of the vessel;

(2) As far as practicable, on each open deck extending to the side of the vessel; and

(3) Near the stern.

(c) *Ocean or short international voyage service.* On each vessel in ocean or short international voyage service, not less than two of the ring life buoys with water lights must each have a self-activating smoke signal approved by the Commandant (G–MVI) as meeting Subpart 160.057 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/31.3 of SOLAS 74/83. Each of these ring life buoys must be capable of quick release from the navigating bridge.

(d) *Ocean, short international voyage, or coastwise service.* Each ring life buoy on a vessel in ocean, short international voyage, or coastwise service must be orange.

§ 199.72 Lifejackets.

(a) *General.* A lifejacket must be provided for each person permitted on board the vessel. Each lifejacket must be approved by the Commandant (G–MVI) as meeting Subpart 160.002, Subpart 160.005, or Subpart 160.055 of this Chapter. On each vessel in ocean, short international voyage, or coastwise service, each lifejacket must also be approved by the Commandant as meeting Regulations III/30.2 and III/32.1 of SOLAS 74/83.

(1) In addition,—

(i) A number of child-size lifejackets equal to at least 10% of the number of passengers permitted on board must be provided or such greater number as necessary to provide a lifejacket for each person smaller than the lower size limit of the adult lifejackets provided to meet this section; and

(ii) The engineroom, pilothouse, bow lookout, and each work station and industrial work site remotely located from the lifejackets carried under paragraph (a) of this section, must have enough lifejackets to equal the number of persons normally on watch in, or assigned to, the station at one time.

(2) Where, due to the particular arrangements of the vessel, the lifejackets under paragraph (a)(1) of this section could become inaccessible, the OCMI may require an increase in the number of lifejackets to be carried, or suitable alternative arrangements.

(b) *Services other than ocean or short international voyage.* Notwithstanding the requirements of paragraph (a) of this section, on a vessel not in ocean or short international voyage service—

(1) A lifejacket is not required at a watch or work station for a person whose cabin, stateroom, or berthing area (and the lifejackets stowed in that location) is readily accessible to the watch or work station; and

(2) Child-size lifejackets are not required if the vessel does not carry persons smaller than the lower size limit of the adult lifejackets.

(c) *Great Lakes service.* Each vessel of 3000 tons gross tonnage and over in Great Lakes service, having forward berthing or working spaces widely separated from messing or recreational spaces aft, must carry lifejackets in addition to those required under paragraph (a) of this section, sufficient for 50 percent of the number of persons permitted on board.

§ 199.73 Rescue boat immersion suits: ocean, short international voyage, coastwise, or Great Lakes service.

On each vessel with a rescue boat in ocean, short international voyage, coastwise, or Great Lakes service, an immersion suit of appropriate size must be provided for each person assigned to the rescue boat crew.

§ 199.75 Lights for lifejackets and immersion suits: ocean, short international voyage, coastwise, or Great Lakes service.

(a) Each lifejacket and each immersion suit carried on a vessel engaged in ocean, short international voyage, coastwise, or Great Lakes service, must have a lifejacket light securely attached to the front shoulder area of the lifejacket or immersion suit. The lifejacket light must be approved by the Commandant (G–MVI) as meeting—

(1) For a vessel in ocean service, Subpart 161.012 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/32.3 of SOLAS 74/83; or

(2) For a vessel in short international voyage, coastwise, or Great Lakes service, Subpart 161.012 of this Chapter.

(b) Until July 1, 1991, a lifejacket light on a vessel in ocean service built before July 1, 1986 is not required to be approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/32.3 of SOLAS 74/83, if the light is approved under Subpart 161.012 of this chapter, and is in good and serviceable condition.

§ 199.76 Whistles for lifejackets and immersion suits: ocean or short international voyage service.

Each lifejacket and each immersion suit carried on a vessel engaged in ocean or short international voyage service must have a whistle of the ball type or multi-tone type, of corrosion-resistant construction, and in good working order.

(a) The whistle must be attached to the lifejacket or immersion suit by a lanyard without hooks, snaps, clips, etc. The lanyard must be long enough to

permit the whistle to reach the mouth of the wearer.

(b) If the lanyard allows the whistle to hang below the waist of the wearer, the whistle must be stowed in a pocket on the lifejacket or immersion suit, or be stowed with the lanyard coiled and stopped off.

§ 199.78 Stowage of lifejackets and immersion suits.

(a) *General.* Unless otherwise stated in this section, lifejackets and immersion suits must be distributed throughout the cabins, staterooms, berthings, and other places convenient for each person permitted on board.

(1) Each stowage container for lifejackets or immersion suits must not be capable of being locked.

(2) Each lifejacket and immersion suit kept in a stowage container must be readily available.

(3) Each lifejacket and immersion suit stowed overhead must be supported in a manner that allows quick release for distribution.

(4) If lifejackets or immersion suits are stowed more than 2.1 m (7 ft.) above the deck, a means for quick release must be provided and must be capable of operation by a person standing on the deck.

(5) Each child size lifejacket and child size immersion suit must be stowed in a location which is appropriately marked and separated from adult size devices, so that child size devices are not mistaken for adult size devices.

(b) *Rescue boat immersion suits: ocean, short international voyage, coastwise, or Great Lakes service.* The immersion suits required under § 199.73 must be stowed near the rescue boat, or in some other location readily accessible to the rescue boat crew.

(c) *Lifejackets for engineroom, pilothouse, bow lookout, and work stations and industrial work sites.* The additional lifejackets required under § 199.72(a)(1)(ii) must be stowed in places readily accessible to the locations specified in that section.

(d) *Great Lakes service.* The lifejackets required under § 199.72(c) must be stowed in the vicinity of the muster or embarkation stations.

§ 199.80 Station bill (muster list) and emergency instructions.

This section applies to each passenger vessel and each other vessel 500 tons gross tonnage and over. Clear instructions to be followed in the event of an emergency must be provided for each person on board.

(a) Identical station bills (muster lists) must be exhibited in conspicuous places throughout the vessel including the navigating bridge, engineroom and crew accommodation spaces. The station bill must be prepared and posted before the vessel begins its voyage. After the station bill has been prepared, if any change takes place that necessitates an alteration in the station bill, the master must either revise the station bill or prepare a new one. Each station bill must—

(1) Give instructions for operating the general alarm system required under Subpart 113.25 of this chapter;

(2) Identify the emergency signals;

(3) Specify the action to be taken by crew and passengers when each signal is sounded;

(4) Specify how the order to abandon the vessel will be given;

(5) Specify the survival craft each person on board is assigned to;

(6) Specify the officers that are assigned to make sure that lifesaving and fire fighting appliances are maintained in good condition and are ready for immediate use;

(7) Show the duties assigned to the different members of the crew including—

(i) Persons in command and the chain of command;

(ii) Closing of the watertight doors, fire doors, valves, scuppers, sidescuttles, skylights, portholes and other similar openings in the vessel's hull;

(iii) The stopping of fans and ventilating systems;

(iv) Equipping the survival craft and other lifesaving appliances;

(v) Preparation and launching of survival craft;

(vi) General preparations of other lifesaving appliances;

(vii) Muster of passengers and other persons in addition to the crew;

(viii) Use of communication equipment;

(ix) Responsibility for the portable radio apparatus;

(x) Manning of the rescue boats for rescuing persons overboard and other emergencies requiring the use of the rescue boat;

(xi) Manning of emergency squad assigned to deal with fires and other emergencies;

(xii) Administration of first-aid;

(xiii) Special duties assigned with respect to the use of fire-fighting equipment and installations; and

(xiv) Such other duties as are necessary for the proper handling of the vessel in an emergency;

(8) Show the duties assigned to members of the crew, generally from the steward's department, in relation to passengers in case of emergency, including—

(i) Warning the passengers;

(ii) Seeing that passengers are suitably dressed and have donned their lifejackets or immersion suits correctly;

(iii) Assembling passengers at muster stations;

(iv) Keeping order in the passageways and on the stairways and generally controlling the movements of the passengers;

(v) Making sure that a supply of blankets is taken to the survival craft;

(9) Specify substitutes for key persons if they are disabled, taking into account that different emergencies require different actions; and

(10) Be at least poster size [600 mm (24 in.) x 750 mm (30 in.)].

(b) Illustrations and instructions in English and any other appropriate language must be posted in each passenger cabin and be conspicuously displayed at each muster station and other passenger spaces to inform passengers of—

(1) The fire and emergency signal;

(2) The abandon-ship signal;

(3) Their muster station;

(4) The essential actions they must take in an emergency;

(5) The location of lifejackets, including child size lifejackets;

(6) Fully illustrated instructions on the method of donning lifejackets;

(7) If immersion suits are provided for passengers, the location of the immersion suits, including child size immersion suits; and

(8) If immersion suits are provided for passengers, fully illustrated instructions on the method of donning immersion suits.

(c) Each vessel equipped with inflatable liferafts must have the manufacturer's approved launching and inflating instruction placards posted in conspicuous places readily available to the crew and passengers. The number and location of the placards must be accepted by the OCMI.

(d) Each vessel equipped with immersion suits must have the manufacturer's approved donning and use instruction placards posted in conspicuous places readily available to the crew. The number and location of the placards must be accepted by the OCMI.

§ 199.90 Operating instructions.

Posters or signs must be on or in the vicinity of each survival craft and its launching controls and must—

(a) Illustrate the purpose of controls;

(b) Illustrate the procedures for operating the launching device;

(c) Give relevant instructions or warnings;

(d) Be easily seen under emergency lighting conditions; and

(e) Use symbols in accordance with IMO recommendation A.603(15).

§ 199.110 Survival craft muster and embarkation arrangements.

(a) One or more muster stations must be close to each embarkation station. Each muster station must have sufficient space to accommodate all persons assigned to muster at that station. An embarkation station may serve as a muster station if there is sufficient space to accommodate all persons assigned to muster at that station.

(b) Each muster station and embarkation station must be readily accessible from accommodation and work areas.

(c) Each muster station and embarkation station for a survival craft which is boarded before it is launched, must be arranged to enable stretcher cases to be placed in the survival craft.

(d) Each embarkation station must be located where it is not necessary to climb up more than three steps on stairs or a ladder, or climb over obstructions to—

(1) Reach the embarkation station from the adjacent deck house; and

(2) Board the survival craft from the embarkation station.

(e) An embarkation ladder must be at each launching station or at each two adjacent launching stations. Each embarkation ladder must be approved by the Commandant (G–MVI) as meeting Subpart 160.017 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/48.7 of SOLAS 74/83.

(1) Each ladder must extend in a single length, from the deck to the waterline in the lightest seagoing condition under unfavorable conditions of trim and with the vessel listed up to 15° either way.

(2) Each ladder must be secured to the deck and stowed ready to be put over the side and used.

(3) Handholds must be provided to allow safe passage between the deck and the head of the ladder.

(4) The OCMI may permit an embarkation ladder to be replaced by a device approved by the Commandant (G–MVI) to provide safe and rapid access to survival craft in the water, provided that there is at least one embarkation ladder on each side of the vessel.

(5) The OCMI may permit other safe and effective means of embarkation for a liferaft required under § 199.261(h).

(6) An embarkation ladder is not required if—

(i) The distance from the embarkation deck to the vessel's lightest operating waterline is less than 3 m (10 ft.); and

(ii) The vessel is not in ocean or short international voyage service.

(f) Means must be provided for bringing each davit-launched survival craft against the side of the vessel and holding it alongside to allow persons to be—

(1) Safely embarked in the case of a survival craft intended to be boarded over the edge of the deck; and

(2) Safely disembarked after a drill in the case of a survival craft not intended to be moved to the stowed position with a full complement of persons on board.

(g) Each davit-launched liferaft launching arrangement must have a means to hold the liferaft in the embarkation position that—

(1) Will hold the liferaft securely in high winds;

(2) Can be rapidly engaged by hooks, clips, or a similar arrangement that does not require lashing, tying, adjustment, or separate tools; and

(3) Can be rapidly released for launching by one person from within the loaded liferaft in not more than two separate motions.

§ 199.120 Launching stations.

(a) Each launching station must be positioned to ensure safe launching considering in particular clearance from—

(1) The propeller; and

(2) Steeply overhanging portions of the hull.

(b) As far as possible, survival craft must be launched down the straight side of the vessel, except for survival craft for free-fall launching.

(c) Each launching station in the forward part of the vessel must—

(1) Be located aft of the collision bulkhead in a sheltered position; and

(2) Have a launching appliance approved by the Commandant (G–MVI) as being of sufficient strength for forward installation.

§ 199.130 Stowage of survival craft.

(a) *General.* Each survival craft required to have a launching appliance, must be stowed as close to accommodation and service spaces as possible.

(1) Each survival craft must be stowed—

(i) In a way that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft or rescue boat at any other launching station;

(ii) As near the water surface as is safe and practicable, except as provided in paragraphs (a)(1)(iii) and (d) of this section;

(iii) Where the survival craft in the embarkation position is above the waterline with the vessel—

(A) In the fully loaded condition;

(B) Under unfavorable conditions of trim; and

(C) Listed up to 20° either way, or to the angle where the vessel's weatherdeck edge becomes submerged, whichever is less;

(iv) In a way that the crew can gain access to prepare the survival craft for launching;

(v) Sufficiently ready for use so that two crew members can complete preparations for embarkation and launching in less than 5 min;

(vi) Fully equipped as required under this subchapter; and

(vii) As far as practicable, in a secure and sheltered position and protected from damage by fire and explosion.

(2) With the exception of survival craft not over 185 kg (407.8 lb.), a survival craft must not require lifting from its stowed position in order to launch.

(i) If lifting is required for a survival craft not over 185 kg, it must not be greater than 300 mm (1 ft.).

(ii) The prohibition on lifting does not apply to a davit-launched liferaft lifted by a manually powered winch from its stowed position to its embarkation position.

(3) Each vessel operating in an area where icing is likely to be encountered, must provide each exposed winch mechanism with a fabric cover, or equivalent, so that ice may be readily broken away to operate the winch.

(b) *Stowage position: ocean, short international voyage, or coastwise service.* Each vessel in ocean, short international voyage or coastwise service having widely separated accommodation and service spaces, must have survival craft of each type required on the vessel as close as possible to each such space to serve those persons normally in that space. The capacity and arrangement of the survival craft for each such space must be as if each space were a separate vessel.

(c) *Stowage position: Great Lakes; lakes, bays, and sounds; or river service.* Each vessel in Great Lakes; lakes, bays, and sounds; or river service having widely separated accommodation and service spaces, must either have—

(1) Survival craft arranged as required under paragraph (b) of this section, or

(2) Survival craft stowed as close as possible to the accommodation and

service space that normally holds the greatest number of persons, with liferafts stowed as close as possible to each other accommodation and service space of sufficient capacity to accommodate 50% of the persons permitted on board.

(d) *Stowage and embarkation position: ocean, short international voyage, coastwise, or Great Lakes services.* On each vessel in ocean, short international voyage, coastwise, or Great Lakes services, each survival craft served by a launching appliance must be stowed in a position where the survival craft in the embarkation position is not less than 2 m (79 in.) above the waterline under the conditions described under paragraph (a)(1)(iii) of this section.

§ 199.133 Stowage of lifeboats.

In addition to meeting § 199.130, each lifeboat must be stowed as required under this section.

(a) Each lifeboat for lowering down the side of the vessel must be stowed as far forward of the propeller as practicable. The vessel must be arranged so each lifeboat, in its stowed position, is protected from damage by heavy seas.

(b) Each lifeboat must be stowed attached to its launching appliance.

(c) Means must be provided for recharging lifeboat batteries from the vessel's power supply at a supply voltage not exceeding 55 V.

§ 199.135 Stowage of liferafts and inflatable buoyant apparatus.

In addition to meeting § 199.130, each liferaft and inflatable buoyant apparatus must be stowed as required under this section.

(a) Each liferaft and inflatable buoyant apparatus must be stowed to permit manual release from its securing arrangements, and to permit it to be dropped into the water from the deck on which it is stowed.

(b) Each liferaft and inflatable buoyant apparatus must be stowed at a height above the waterline in the lightest seagoing condition not greater than the maximum stowage height indicated on the liferaft, or on the container of an inflatable liferaft or inflatable buoyant apparatus. Each liferaft and inflatable buoyant apparatus without an indicated maximum stowage height must be stowed no more than 18 m (59 ft.) above the waterline in the lightest seagoing condition.

(c) A gate or other suitable opening must be provided in the rail or bulwark adjacent to the stowage location of each liferaft and inflatable buoyant apparatus, not served by a launching appliance. Alternatively, the liferaft or inflatable buoyant apparatus may be mounted on stanchions or a platform adjacent to the rail or bulwark to allow the liferaft or inflatable buoyant apparatus to be pushed directly overboard.

(1) Each gate or opening must be large enough to allow the liferaft or inflatable buoyant apparatus to be pushed overboard.

(2) If the liferaft or inflatable buoyant apparatus is intended to be available for use on either side of the vessel, a gate or opening must be provided on each side.

(d) Each davit-launched liferaft must be stowed within reach of its lifting hook, unless some means of transfer is provided that is not rendered inoperable—

(1) Within the limits of trim and list under § 199.130(a)(1);

(2) By vessel motion; or

(3) By power failure.

(e) Each rigid container for an inflatable liferaft to be launched by a launching appliance must be secured in a way that the container or parts of it are prevented from falling into the sea during and after inflation and launching of the contained liferaft.

(f) Each liferaft and inflatable buoyant apparatus arranged for float-free launching must use a hydrostatic release unit approved by the Commandant (G-MVI) as meeting Subpart 160.062 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/38.6.3 of SOLAS 74/83. The hydrostatic release unit must be arranged so that—

(1) The liferaft or inflatable buoyant apparatus, and its painter are secured to the vessel by the hydrostatic release unit;

(2) When the liferaft or inflatable buoyant apparatus is manually released, the painter remains secured to the vessel through the hydrostatic release unit; and

(3) When the hydrostatic release unit opens in the water under hydrostatic pressure, the painter remains secured to the vessel through its weak link.

§ 199.137 Stowage of life floats and buoyant apparatus.

In addition to meeting § 199.130, each life float and buoyant apparatus must be stowed as required under this section. Each life float and buoyant apparatus must be secured to the vessel by a painter and a float-free link.

(a) The float-free link must be—

(1) Certified to meet Subpart 160.073 of this chapter;

(2) Of proper strength for the size of the life float or buoyant apparatus as indicated on its identification tag; and

(3) Secured to the painter at one end and to the vessel on the other end.

(b) The means used to attach the float-free link to the vessel must—

(1) Have a breaking strength of at least the breaking strength of the painter;

(2) If synthetic, be of a dark color or of a type certified to be resistant to deterioration from ultraviolet light; and

(3) If metal, be corrosion resistant.

(c) If the life float or buoyant apparatus does not have a painter attachment fitting, a means for attaching the painter must be provided by a wire or line that—

(1) Encircles the body of the device;

(2) Will not slip off;

(3) Has a breaking strength that is at least the strength of the painter; and

(4) If synthetic, is of a dark color or is of a type certified to be resistant to deterioration from ultraviolet light.

(d) The float-free link described under paragraphs (a) and (b) of this section is not required if the waters in which the vessel is certificated to operate are not as deep as the length of the painter.

(e) If the vessel carries more than one life float or buoyant apparatus in a group with each group secured by a single painter,—

(1) The combined weight of each group of life floats and buoyant apparatus must not exceed 185 kg (407.8 lb.);

(2) Each life float and buoyant apparatus must be individually attached to the painter by a line meeting § 199.175(d)(4) and long enough that each life float or buoyant apparatus can float without contacting any other life float or buoyant apparatus in the group; and

(3) The strength of the float-free link under paragraph (a)(2) of this section and the strength of the painter under § 199.175(d)(4)(ii) must be determined by the combined capacity of the group of life floats and buoyant apparatus.

(f) Life floats and buoyant apparatus must not be secured to the vessel except by the painter and by lashings that can be easily released or by a hydrostatic release unit approved under Subpart 160.062 of this chapter. They must not be stowed in more than four tiers. When stowed in tiers, the separate units must be kept apart by spacers.

(g) There must be means to prevent shifting.

§ 199.140 Stowage of rescue boats.

(a) Each rescue boat must be stowed—

(1) Ready for launching in not more than 5 min;

(2) In a position suitable for launching and recovery;

(3) In a way that neither the rescue boat nor its stowage arrangements will interfere with the operation of any survival craft at any other launching station; and

(4) If it is also a lifeboat, in compliance with §§ 199.130 and 199.133.

(b) Means must be provided for recharging rescue boat batteries from the vessel's power supply at a supply voltage not exceeding 55 V.

(c) Each inflated rescue boat must be kept fully inflated at all times.

§ 199.150 Survival craft launching and recovery arrangements: general.

(a) A launching appliance approved by the Commandant (G-MVI) as meeting Regulation III/30.2 of SOLAS 74/83, Regulation III/48.1 of SOLAS 74/83, and either Regulation III/48.2, III/48.4, III/48.5, or III/48.6 of SOLAS 74/83, must be provided for each survival craft except that a launching appliance is not required for the following:

(1) A survival craft boarded from a position on deck less than 4.5 m (14 ft., 9 in.) above the waterline in the lightest seagoing condition and that either—

(i) has a mass of not more than 185 kg (407.8 lb.); or

(ii) is stowed for launching directly from the stowed position under unfavorable conditions of trim of up to 10° and with the vessel listed up to 20° either way.

(2) A survival craft having a mass of not more than 185 kg (407.8 lb.) and carried in excess of the survival craft for 200% of the total number of persons permitted on board the vessel.

(b) Each launching appliance together with all its lowering and recovery gear must be arranged in a way that the fully equipped survival craft it serves can be safely lowered when loaded with its full complement of persons, and also without persons, against a trim of up to 10° and—

(1) A list of up to 20° on the high side; and

(2) A list of up to 20° or the degree of list where the survival craft becomes waterborne, whichever is the greater, on the low side.

(c) A launching appliance must not depend on any means other than gravity or stored mechanical power independent of the vessel's power supplies to launch the survival craft it serves in the fully loaded and equipped condition and also in the light condition.

(d) The ultimate strength of each structural attachment to the vessel of a davit, winch, or other launching appliance, must be at least 4.5 times the load imparted on the attachment by the launching appliance and its fully loaded survival craft under the most adverse combination of list and trim under paragraph (b) of this section.

(e) The same type of release mechanism must be used for each similar survival craft carried on board the vessel. For the purpose of this requirement, a release mechanism is of the same type as another release mechanism if both are operated in the same way.

(f) Preparation and handling of survival craft at any one launching station must not interfere with the prompt preparation and handling of any other survival craft at any other station.

(g) The arrangement of each launching appliance must enable safe, rapid boarding of the survival craft.

(h) Each launching mechanism must be arranged so it may be actuated by one person from a position on the vessel's deck, and also from a position within the survival craft. Each launching and recovery arrangement must allow the operator on the deck to observe the survival craft at all times during launching.

(i) Means must be provided outside the machinery space to prevent any discharge of fluids onto survival craft during abandonment. Acceptable means include—

(1) Baffles to deflect fluid down the vessel's side;

(2) Reach rods or other means to close the discharge openings; or

(3) Remote means for stopping the pumps.

(j) If there is a danger of the survival craft being damaged by the vessel's stabilizer wings, the stabilizer wings must be able to be brought inboard using power from the emergency power system required under Part 112 of this chapter. Indicators operated by the emergency power system must be on the navigating bridge to show the position of the stabilizer wings.

§ 199.153 Survival craft launching and recovery arrangements using falls and a winch.

(a) Each launching appliance using falls and a winch must be approved by the Commandant (G-MVI) as meeting Regulations III/30.2, III/48.1, and III/48.2 of SOLAS 74/83; and either—

(1) For a lifeboat, Subparts 160.015 and 160.032 of this chapter; or

(2) For a davit-launched liferaft, Subpart 160.063 of this chapter with an automatic disengaging apparatus meeting Subpart 160.070 of this chapter.

(b) Each fall wire used in a launching appliance must be of rotation-resistant, corrosion-resistant, pre-lubricated steel wire rope.

(1) For the purposes of this requirement, galvanized wire rope is considered to be corrosion-resistant.

(2) The breaking strength of each fall wire and each attachment used on the fall must be at least six times the load imparted on the fall by the fully-loaded survival craft.

(3) Each replacement fall wire must be the same as that approved for use with the launching appliance.

(c) Each fall must be in a single-part arrangement.

(d) Each fall must be long enough for the survival craft to reach the water with the vessel in its lightest seagoing condition, under unfavorable conditions of trim and with the vessel listed up to 20° either way.

(e) Each fall must be arranged to lead fair in each davit position. Falls must not lead past any operating position of the winch, such as hand cranks, pay-out wheels, and brake levers.

(f) The lead sheave to each winch drum must be located to result in a maximum fleet angle of not more than 8°.

(g) Each winch drum must be arranged so the fall wire winds onto the drum in a level wrap.

(1) The winch drum of a launching appliance must be of such size that there will be no more than two layers of wire on the drum, provided that the maximum fleet angle is not more than 4°.

(2) Each winch drum of a launching appliance that has a maximum fleet angle of more than 4° must be of such size that there will be no more than one layer of wire on the drum.

(h) Each fall, where exposed to damage or fouling, must have guards or equivalent protection. Each fall which leads along a deck must be covered with a guard which is not more than 300 mm (1 ft.) above the deck.

(i) The lowering speed for a fully loaded survival craft must be not less than that obtained from the formula;

$$S = 0.4 + (0.02\ H);$$

where S is the speed of lowering in meters per second, and H is the height in meters from davit head to the waterline at the lightest seagoing condition. For the purposes of this calculation, H shall not be greater than 30, regardless of the lowering height. (In English units, the formula is $S = 79 + (1.2\ H)$, where S is in ft./min. and H is in ft., with H not greater than 99.)

(j) The lowering speed for a survival craft loaded with all of its equipment, but only one person, must be not less than 70% of the speed required under paragraph (i) of this section.

(k) The lowering speed for a fully loaded survival craft must be not more than 1.3 m/sec. (256 ft./min.).

(l) If a survival craft is recovered by electric power, the electrical installation must meet Part 111 of chapter, including the requirements in Subpart 111.95 on electric power-operated boat winches. If a survival craft is recovered by any means of power, including a portable power source, a limit switch or equivalent safety device must be provided on each fall that—

(1) Is located in either the power or control circuit;

(2) Is connected in series which each other switch or equivalent device on the launching appliance;

(3) Automatically cuts off all power in the circuit in which the switch or equivalent device is located before the survival craft reaches the fully stowed position;

(4) Stops recovery of the survival craft under power at least 300 mm (12 in.) from the final stowed position; and

(5) Keeps power disconnected as the survival craft is manually brought to the stowed position.

§ 199.155 Survival craft launching and recovery arrangements: other devices

Each marine escape slide must be capable of being deployed by one person at the embarkation station. Notwithstanding the requirements under § 199.150(h), a marine escape slide is not required to be actuated from a position within the survival craft.

§ 199.157 Lifeboat launching and recovery arrangements.

(a) Each lifeboat must be capable of being launched with the vessel making headway of 5 knots in calm water. A painter may be used to meet this requirement.

(b) Each lifeboat launching appliance must be capable of recovering the lifeboat with its crew.

(c) Each launching and recovery arrangement must allow the operator on the vessel to observe the lifeboat at all times during recovery.

(d) For each open lifeboat and partially enclosed lifeboat, a davit span must be provided with not less than two lifelines of sufficient length to reach the water with the vessel in its lightest seagoing condition, under unfavorable conditions of trim and with the vessel listed up to 20° either way.

§ 199.160 Rescue boat embarkation, launching and recovery arrangements.

Each rescue boat embarkation and launching arrangement must permit the rescue boat to be boarded and launched in the shortest possible time.

(a) If the rescue boat is one of the vessel's survival craft, the embarkation arrangements and launching station must meet §§ 199.110 and 199.120.

(b) If a workboat or launch is used in place of a rescue boat, the stowage, embarkation, launching, and recovery arrangements must meet the requirements of this section.

(c) The rescue boat launching arrangements must meet the requirements for lifeboat launching arrangements in § 199.150 and § 199.157, and if the launching arrangement uses falls and a winch, § 199.153. If the launching arrangement uses a single fall, the release mechanism may be an automatic disengaging apparatus approved by the Commandant (G-MVI) as meeting Subpart 160.070 of this chapter, instead of a lifeboat release mechanism.

(d) Rapid recovery of the rescue boat must be possible when loaded with its full complement of persons and equipment. If the rescue boat is also a lifeboat, rapid recovery must be possible when loaded with its lifeboat equipment and an approved rescue boat complement of at least six persons. Each rescue boat launching appliance must be capable of hoisting the rescue boat when loaded with its full rescue boat complement of persons and equipment at a rate of not less than 0.3 m/sec. (59 ft./min.).

§ 199.170 Line-throwing appliance: ocean, short international voyage, or coastwise service.

(a) Each of the following vessels must carry a line-throwing appliance approved under Subpart 160.040 of this chapter:

(1) Each passenger vessel in ocean or short international voyage service.

(2) Each vessel 500 tons gross tonnage and over, other than a passenger vessel, in ocean service.

(b) Each vessel in ocean or coastwise service, not covered under paragraph (a) of this section, must carry either—

(1) A line-throwing appliance approved under Subpart 160.040 of this chapter; or

(2) A line-throwing appliance approved under Subpart 160.031 of this chapter.

(c) Each line throwing appliance required to be carried under this section, must also have the equipment on the list provided with the approved appliance.

(d) Each line throwing appliance required to be carried under this section, must also have an auxiliary line that—

(1) If manila, is 75 mm (3 in.) or more in circumference;

(2) If other than manila, has a breaking strength of at least 40 kN (9,000 lb.);

(3) If other than manila, is of a dark color or of a type certified to be resistant to deterioration from ultraviolet light;

(4) If provided for a line throwing appliance approved under Subpart 160.040 of this chapter, is at least 450 m (1,500 ft.) long; and

(5) If provided for a line throwing appliance approved under Subpart 160.031 of this chapter, is at least 150 m (500 ft.) long.

(e) The line throwing appliance and its equipment must be readily accessible for use, stowed in—

(1) Its container carried within the pilothouse or on the navigating bridge; or

(2) The portable magazine chest under § 199.68(d)(2) of this chapter.

§ 199.175 Survival craft and rescue boat equipment.

(a) *General.* Each item of survival craft and rescue boat equipment must be good quality, and suitable for the purpose it is intended to serve. Unless otherwise stated in this section, each item of equipment carried, whether required under this section or not, must be secured by lashings, stored in lockers, compartments, brackets, or have equivalent mounting or storage arrangements that do not—

(1) Reduce seating capacity;

(2) Interfere with launching, recovery, or rescue operations;

(3) Adversely affect seaworthiness of the survival craft or rescue boat; or

(4) Overload the launching appliance.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

(1) "SOLAS A Pack" on a vessel in ocean service.

(2) Either "SOLAS A Pack" or "SOLAS B Pack" on a vessel in short international voyage service or coastwise service.

(3) "SOLAS A Pack", "SOLAS B Pack", or "Limited Service" on a vessel in a service other than ocean, short international voyage, or coastwise service.

(c) *Lifeboats, rigid liferafts, and rescue boats.* Unless otherwise stated in this paragraph, each lifeboat, each rigid liferaft, and each rescue boat must carry the equipment specified for it in Table 199.175(c) under the vessel's category of service. A lifeboat that is also a rescue boat must carry the equipment in the "lifeboat" column. Each rigid liferaft equipped as required under the "Ocean"

column must be permanently marked "SOLAS A Pack" in block letters at least 25 mm (1 in.) high. Each rigid liferaft equipped as required under the "Short International Voyage and Coastwise" column must be permanently marked "SOLAS B Pack" in block letters at least 25 mm (1 in.) high. Each item in the table is described below along with any exceptions or limitations, with the paragraph number corresponding to the item number in the table.

(1) [Reserved]

(2) *Bailer.* The bailer must be buoyant, except for a bailer with a lanyard used in the lifeboat or rescue boat before July 1, 1986 and continued in use thereafter.

(3) *Bilge pump.* The bilge pump must be approved under Subpart 160.044 of this chapter and must be installed in the lifeboat in a ready-to-use condition.

(i) The bilge pump for a lifeboat approved for less than 70 persons must be either size 2 or size 3, except for a size 1 bilge pump used in a lifeboat of less than 330 cubic foot capacity before July 1, 1986 and continued in use thereafter.

(ii) The bilge pump for a lifeboat approved for 70 persons or more must be size 3.

(4) *Boathook.* Each boathook must be kept free and ready for use at all times. Each boathook in a lifeboat and a rigid rescue boat must have a single hook and ball-point. The boathook in an inflated or rigid/inflated rescue boat must be a type designed to minimize the possibility of damage to the fabric portions of the hull. The handle of each boathook must be—

(i) Of clear-grained white ash or the equivalent;

(ii) At least 38 mm (1½ in.) in diameter;

(iii) At least 2.4 m (8 ft.) long for a boat less than 8.8 m (29 ft.) in length; and

(iv) At least 3.6 m (12 ft.) long for a boat 8.8 m (29 ft.) or more in length.

(5) *Bucket.* Each bucket must be of corrosion-resistant material with a capacity of at least 7.5 liters (2 U.S. gallons). A lanyard of a minimum diameter of 4 mm (5/32 in.) and at least 1.8 m (6 ft.) long must be attached to the bail.

(6) *Can opener.* Each can opener must be suitable for opening the cans carried in the lifeboat or liferaft. The can opener in a jackknife approved under Subpart 160.043 of this chapter counts toward this requirement.

(7) *Compass.* The compass and its mounting arrangement must be approved by the Commandant (G–MVI). In a totally enclosed lifeboat and in a rescue boat, the binnacle must be permanently installed at the steering position. In any other lifeboat, either the binnacle must be permanently installed at the steering position, or the mounting base for a removable compass must be permanently installed in a location where the compass will be in sight of the helmsman.

(8) *Cover, protecting.* The protecting cover for an open lifeboat must be approved by the Commandant (G–MVI). The protecting cover for a partially enclosed lifeboat is approved as a component of the lifeboat.

(9) *Dipper.* Each dipper must be of corrosion-resistant construction, attached to a lanyard at least 0.9 m (3 ft.) long. The dipper must be suitable for dipping collected rainwater from the lifeboat's water tanks.

(10) *Ditty bag.* The ditty bag must be canvas or equivalent material, and must contain a sailmaker's palm, needles for repairing a sail, sail twine, marline, and marline spike.

(11) *Drinking cup.* The drinking cup must be—

(i) Of corrosion resistant material;

(ii) Graduated in ounces or milliliters or both; and

(iii) Provided with a lanyard of a minimum diameter of 4 mm (5/32 in.) and at least 0.9 m (3 ft.) long.

(12) *EPIRB/SART.* A Class S EPIRB, a Category 2 Satellite EPIRB, or a SART must be mounted in a position in the boat where it is ready to be used.

(i) The Class S EPIRB must be a type which meets the regulations of the Federal Communications Commission at 47 CFR 80.1059.

(ii) The Category 2 Satellite EPIRB must be a type which meets the regulations of the Federal Communications Commission at 47 CFR 80.1061 (See 53 FR 37308 of September 26, 1988).

(iii) The SART must be a radar transponder which meets the regulations of the Federal Communications Commission at 47 CFR 80.375(e) and IMO Resolution A.604(15).

(13) *Fire extinguisher.* Each fire extinguisher must be approved under Subpart 162.028 of this chapter. Each fire extinguisher must be Type B–C, Size I or larger.

(14) *First-aid kit.* The first-aid kit in a lifeboat and in a rescue boat must be approved under Subpart 160.041 of this chapter. The first-aid kit in a rigid liferaft must be approved under Subpart 160.054 of this chapter.

(15) *Fishing kit.* The fishing kit must be approved under Subpart 160.061 of this chapter.

(16) *Flashlight.* The flashlight must be a Type I or Type III constructed and marked in accordance with ASTM F1014. Three spare batteries and two spare bulbs, stored in a watertight container, must be provided for each flashlight. Three-cell size flashlights bearing Coast Guard approval numbers in the 160.018 series may continue to be used as long as they are in a serviceable condition.

(17) *Hatchet.* Each hatchet must be approved under Subpart 160.013 of this chapter. A lanyard of a minimum diameter of 4 mm (5/32 in.) must secure each hatchet to the lifeboat. The lanyard must be long enough to allow a hatchet to reach the falls and the painter.

(i) Where one hatchet is required, it must be stowed in a bracket near a release hook.

(ii) When two hatchets are required and the boat has two release hooks, there must be a hatchet stowed in a bracket near each release hook.

(iii) When two hatchets are required and the boat has one release hook, there must be a hatchet stowed in a bracket near the release hook and one stowed in a bracket near the towing point.

(18) *Heaving line.* Each heaving line must—

(i) Be buoyant;

(ii) Be at least 8 mm (5/16 in.) in diameter;

(iii) Be at least 30 m (99 ft.) long; and

(iv) Have a buoyant rescue quoit attached to one end.

(19) *Instruction card.* The instruction card must be printed on waterproof plastic, and must be suspended from the inside canopy. The instruction card must contain information on the immediate steps to be taken by survivors upon entering the liferaft.

(20) *Jackknife.* The jackknife must be approved under Subpart 160.043 of this chapter, and must be attached to the boat by its lanyard.

(21) *Knife.* The knife must be of the non-folding type with a buoyant handle.

(i) The knife for a rigid liferaft must be secured to the raft by a lanyard attached and stowed in a pocket on the exterior of the canopy near the point where the painter is attached to the liferaft. The lanyard must be long enough to permit the knife to be used to cut the painter. If an approved jackknife is substituted for the second knife required on a liferaft equipped for 13 or more persons, the jackknife must be secured to the liferaft by a lanyard.

(ii) The knife in an inflated or rigid/inflated rescue boat must be a type designed to minimize the possibility of damage to the fabric portions of the hull.

(22) *Ladder.* The boarding ladder must be capable of being used on either side of the boat to enable persons in the water to board the boat. The ladder must be a permanently installed rigid

type or a flexible ladder kept rigged outboard ready for use. Each flexible ladder must meet the following requirements:

(i) The ladder must have flat steps with handhold openings in them.

(ii) Each step must have a bare wood surface, or have a non-skid surface.

(iii) The steps of the ladder must be spaced approximately 0.3 m (12 in.) apart.

(iv) Each suspension member must be at least 15 mm (5/8 in.) diameter manila rope, or another material provided it is at least 15 mm in diameter and has a breaking strength of at least 17.6 kN (3,960 lb.). Synthetic rope must not be used unless it is ultraviolet light resistant, or is pigmented in a dark color.

(v) The lowest step of the ladder must be not less than 0.4 m (15 3/4 in.) below the lifeboat's light waterline.

(23) *Lantern.* Each open lifeboat must have a lantern containing sufficient oil to burn for at least 9 hours. The lantern must be kept ready for use. Each totally enclosed and partially enclosed lifeboat must have an operating interior lighting system that is approved as a component of the lifeboat.

(24) *Lifejacket.* Each lifejacket must be approved by the Commandant (G-MVI) as meeting Subpart 160.002, Subpart 160.005, or Subpart 160.055 of this Chapter. On each vessel in ocean, short international voyage, or coastwise service, each lifejacket must also be approved by the Commandant as meeting Regulations III/30.2 and III/32.1 of SOLAS 74/83.

(25) *Mast and sail.* The mast and sail unit must consist of one standing lug sail together with the necessary spars, rigging, and cover or storage container.

(i) The rigging must be at least 4.75 mm (3/16 in.) in diameter and must be either galvanized or stainless steel wire rope.

(ii) The sails must be of good quality canvas or other material acceptable to the Commandant (G-MVI), and international orange in color.

(26) *Matches.* Each box of matches must consist of at least 100 wooden friction matches with striking surface, in its own watertight container.

(27) *Signalling mirror.* Each signalling mirror must be approved by the Commandant (G-MVI).

(28) *Oars.* Each unit of oars must consist of sufficient buoyant oars or paddles to make headway in calm seas. An oarlock or equivalent device, either permanently installed or attached to the boat by a lanyard or chain, must be provided for each oar.

(i) Each lifeboat and rescue boat built after June 30, 1986 contains information provided by the manufacturer on the number, size, and type of oars or paddles to meet this requirement.

(ii) Each lifeboat built before July 1, 1986 that does not contain information provided by the manufacturer on the number, size, and type of oars or paddles required to meet this requirement, must have the number, size, and type of oars as required in the regulations in effect for the vessel on June 30, 1986.

(iii) Each rescue boat built before July 1, 1986 that does not contain information provided by the manufacturer on the number, size, and type of oars or paddles required to meet this requirement, must carry two oars, if it is a rigid hull boat, or two paddles if it is an inflated hull boat.

(iv) A rescue boat meeting Subpart 160.056 of this chapter is not required to carry oars under paragraphs (c)(28)(i), (c)(28)(ii) or (c)(28)(iii) of this section, if the boat is equipped with a motor and carries two paddles.

(29) *Oil, illuminating.* A quantity of at least 0.94 liter (1 quart) of illuminating oil must be provided in a durable container in addition to the oil provided in the lantern.

(30) *Paddle.* Each paddle must be buoyant.

(31) *Painter.* If the painter is of synthetic material, it must be of a dark color or of a type certified to be resistant to deterioration from ultraviolet light.

(i) Each painter for a lifeboat and each painter for a rescue boat other than a rescue boat meeting Subpart 160.056 of this chapter, must be of a length equal to not less than three times the distance from the stowage position of the boat to the waterline in the lightest seagoing condition, or 15 m (50 ft.), whichever is the greater. Each painter must have a breaking strength of at least 34 kN (7,700 lb.).

(A) One painter on a lifeboat must be firmly secured at or near the bow ready for use.

(B) The painter on a rescue boat, and the second painter on a lifeboat, if one is required; must be attached by a painter release device at the forward end of the boat. The painter release device must be capable of quickly releasing the painter even when the painter is being used to tow the boat.

(ii) Each painter for a rescue boat meeting Subpart 160.056 of this chapter must be firmly secured at or near the bow ready for use. The painter must be—

(A) At least 9 m (30 ft.) long;

(B) At least 9.5 mm (3/8 in.) diameter; and

(C) Have a breaking strength of at least 5.5 kN (1,220 lb.).

(iii) The painter for a rigid liferaft must be of a length equal to not less than two times the distance from the stowage position of the liferaft to the waterline in the lightest seagoing condition or 15 m (50 ft.), whichever is the greater.

(A) The painter must have a breaking strength of not less than 13.3 kN (3,000 lb.) for liferafts approved for nine persons or more, and not less than 7.5 kN (1,687 lb.) for any other liferaft.

(B) A float-free link meeting Subpart 160.073 of this chapter must be secured to the end of the painter that is attached to the vessel. The breaking strength of the float-free link must be between 1800 N (400 lb.) and 2400 N (536 lb.).

(32) *Provisions.* Each unit of provisions must be approved by the Commandant (G-MVI) and must consist of not less than 10,000 kJ (2,390 Calories).

(33) *Pump.* The pump or bellows must be manually operated and arranged to be capable of inflating any part of the inflatable structure of the rescue boat.

(34) *Radar reflector.* A SART carried under paragraph (c)(12) of this section meets the requirement for a radar reflector. If the boat does not carry a SART, it must carry a radar reflector certified by its manufacturer to have an apparent cross sectional area of at least 1 m^2 (10.8 $ft.^2$) over 65% of the horizonal plane, using a radar system operating in the 9300–9500 MHz band. The radar reflector must also have mounting provisions to install it on the boat in its proper orientation.

(35) *Rainwater collection device.* The rainwater collection device must—

(i) Be arranged to collect falling rain and direct it into the water tanks in the lifeboat;

(ii) Have a collection area of at least 1 m^2 (10.75 sq. ft.); and

(iii) Be arranged to function unattended after it has been set up.

(36) *Repair kit.* The repair kit for inflated and rigid/inflated rescue boats must contain at least—

(i) Six sealing clamps;

(ii) Five 50 mm (2 in.) diameter tube patches;

(iii) Roughing tool; and

(iv) Cement compatible with the tube fabric. The cement must have an expiration date on its container that is not more than 24 months after the date of manufacture of the cement.

(37) *Rudder and tiller.* The rudder and tiller must be as required in the regulations in effect for the vessel on June 30, 1986.

(38) *Sea anchor.* Each sea anchor must be approved by the Commandant (G–MVI) and have a shock-resistant hawser at least 10 m (33 ft.) long, and a tripping line that provides a firm hand grip when wet.

(i) Each open lifeboat required to have a sea anchor must also have at least 3.75 liters (1 U.S. gal.) of storm oil, consisting of vegetable, fish, or animal oil. The storm oil must be in a container suitable for attachment to the sea anchor and designed to distribute a controlled amount of oil on the water.

(ii) On each rigid liferaft, one sea anchor must be permanently attached to the liferaft in such a way that when the liferaft is waterborne, the sea anchor will cause the liferaft to lie oriented to the wind in the most stable manner. The second sea anchor must be stowed in the rigid liferaft as a spare. Each sea anchor on a rigid liferaft must be fitted with a swivel at each end of the line and must be of a type that is unlikely to turn inside-out between its shroud lines.

(39) *Searchlight.* Each searchlight must be certified by its manufacturer to meet ASTM F1003. The lifeboat must carry two spare bulbs.

(i) The searchlight must be permanently mounted on the canopy, or must have a stanchion type or collapsible type portable mounting on the canopy. The mounting must be located to enable operation of the searchlight by the boat operator.

(ii) The searchlight's power source must be capable of operating the light without charging or recharging, for not less than—

(A) 3 hours continuous operation; or

(B) 6 hours total "on" time in cycles consisting of 15 min. on and 5 min. off.

(iii) If the power source is an engine starting battery, there must be sufficient battery capacity to start the engine at the end of either operating period specified in paragraph (c)(39)(ii) of this section.

(iv) The power source must be connected to the searchlight using watertight electrical fittings meeting Subpart 111.75 of this chapter.

(40) *Seasickness kit.* Each seasickness kit must be packed in a waterproof package and must include one waterproof seasickness bag, anti-seasickness medication, and instructions for using the medication. In totally enclosed and partially enclosed lifeboats, each seasickness kit must be stowed within reach of the seat it is intended for. The anti-seasickness medication must be one of the following:

(i) Six doses of a combination of 25 mg of promethazine hydrochloride and 25 mg of ephedrine sulfate, to be taken at six-hour intervals.

(ii) A transdermal patch containing scopolamine suitable for at least 2 days use.

(41) *Signal, smoke.* Each orange smoke signal must be of the floating type approved by the Commandant (G–MVI) as meeting Subpart 160.022 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/37 of SOLAS 74/83.

(42) *Signal, hand flare.* Each hand flare must be approved by the Commandant (G–MVI) as meeting Subpart 160.021 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/36 of SOLAS 74/83.

(43) *Signal, rocket parachute flare.* Each rocket parachute flare must be approved by the Commandant (G–MVI) as meeting Subpart 160.036 of this Chapter, Regulation III/30.2 of SOLAS 74/83, and Regulation III/35 of SOLAS 74/83.

(44) *Skates and fenders.* The skates and fenders must be as specified by the lifeboat manufacturer to facilitate launching and prevent damage to a lifeboat intended for launching down the side of a vessel.

(45) *Sponges.* Each sponge must have a volume of at least 1000 cm^3 (62 $in.^3$) when fully expanded.

(46) *Survival instructions.* The survival instructions must be in the form of a manual printed on waterproof paper or plastic. The manual must describe the lifeboat or rigid liferaft and its equipment and use. The manual must contain the relevant information in IMO Resolution A.216. The manual in the rigid liferaft must also contain the relevant information in IMO Resolution A.181.

(47) *Table of lifesaving signals.* The table of lifesaving signals must be those in Regulation V/16 of SOLAS 74/83, printed on a waterproof card.

(48) *Thermal protective aid.* Each thermal protective aid must be approved by the Commandant (G–MVI) under Subpart 160.174 of this chapter.

(49) *Tool kit.* The tool kit must contain sufficient tools for minor adjustments to the engine and its accessories. As a minimum, the tool kit must include:

(i) A container large enough to hold all the items in the kit.

(ii) One 340 g (12 oz.) ball peen hammer.

(iii) One screwdriver with a 150 mm (6 in.) flat blade.

(iv) One pair of 200 mm (8 in.) slip-joint pliers.

(v) One 200 mm (8 in.) adjustable wrench.

(50) *Towline.* The towline for a rescue boat meeting Subpart 160.056 of this chapter must be at least the same size and length as its painter. The towline for each other rescue boat and lifeboat must be buoyant, not less than 50 m (164 ft.) in length, and must have a breaking strength of not less than 13.3 kN (3,000 lb.).

(51) *Water.* At least two-thirds of the water must be emergency drinking water approved under Subpart 160.026 of this chapter. The remainder must either be emergency drinking water approved under Subpart 160.026 of this chapter, or desalting apparatus approved under Subpart 160.058 of this chapter capable of producing the required amount of fresh water in 2 days.

(52) *Whistle.* The whistle must be a ball-type or multi-tone whistle of corrosion-resistant construction, attached to a lanyard at least 0.9 m (3 ft.) long.

TABLE 199.175(c)

Item No.	Item	Ocean			Short international voyage and coastwise			Great Lakes			Lakes, bays, and sounds			Rivers		
		Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat
1	(Reserved) [1]															
2	Bailer	1	1 [2]	1	1	1 [2]	1	1	1 [2]	1	1	1 [2]	1	None	None	None.
3	Bilge pump	1 [3]	None	None	1 [3]	None	None	1 [3]	None	None	1	None	None	None	None	None.
4	Boathook	2	None	1	2	None	1	1	None	1	1	None	1	1	None	1
5	Bucket	2	None	1 [4]	2	None	1 [4]	1	None	1 [4]	1	None	None	1	None	None.
6	Can opener	3	3	None	3	3	None	None	None	None	None	None	None	None	None	None.
7	Compass	1	None	1	1	None	1	None	None	None	None	None	None	None	None	None.

TABLE 199.175(c)—Continued

Item No.	Item	Ocean			Short international voyage and coastwise			Great Lakes			Lakes, bays, and sounds			Rivers		
		Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat	Lifeboat	Rigid Liferaft	Rescue boat
8	Cover, protecting	1 [5]	None	None	1 [5]	None	None	None	None	None	None	None	None	None	None	None
9	Dipper	1	None	None	1	None	None	None	None	None	None	None	None	None	None	None
10	Ditty bag	1 [6]	None	None	1 [6]	None	None	None	None	None	None	None	None	None	None	None
11	Drinking Cup	1	1	None	1	1	None	None	None	None	None	None	None	None	None	None
12	EPIRB/SART	1	None	1	1	None	1	None	None	None	None	None	None	None	None	None
13	Fire extinguisher	2 [8]	None	1 [8]	2 [8]	None	1 [8]	2 [8]	None	1 [8]	2 [8]	None	1 [8]	2 [8]	None	1 [8]
14	First-aid kit	1	1	1	1	1	1	None	None	None	None	None	None	None	None	None
15	Fishing kit	1	1	None	None	None	None	None	None	None	None	None	None	None	None	None
16	Flashlight	1	1	1	1	1	1	1	1	1	None	None	None	None	None	None
17	Hatchet	2	None	None	2	None	None	2	None	None	1	None	None	1	None	None
18	Heaving line	2	1	2	2	1	2	None	None	None	None	None	None	None	None	None
19	Instruction card	None	1	None	None	1	None	None	1	None	None	1	None	None	1	None
20	Jackknife	1	None	1	1	None	1	None	None	None	None	None	None	None	None	None
21	Knife	None	1 [9]	1 [10]	None	1 [9]	1 [10]	None	None	None	None	None	None	None	None	None
22	Ladder	1	None	1	1	None	1	1	None	1	None	None	None	None	None	None
23	Lantern or interior lighting	1	None	None	1	None	None	1	None	None	1	None	None	1	None	None
24	Lifejacket	2	None	None	2	None	None	2	None	None	2	None	None	2	None	None
25	Mast and sail	1 [11]	None	None	1 [11]	None	None	None	None	None	None	None	None	None	None	None
26	Matches (boxes)	2 [12]	None	None	2 [12]	None	None	1 [12]	None	None	1 [12]	None	None	1 [12]	None	None
27	Mirror, signalling	2	1	None	2	1	None	None	None	None	None	None	None	None	None	None
28	Oars (units)	1 [13]	None	1	1	None	1	1	None	1	1	None	1	1	None	1.
29	Oil, illuminating (quarts)	1 [14]	None	None	1 [14]	None	None	None	None	None	None	None	None	None	None	None
30	Paddles	None	2	None	None	2	None	None	2	None	None	2	None	None	2	None
31	Painter	2	1	1	2	1	1	2	1	1	1	1	1	1	1	1.
32	Provisions (units per person).	1 [15]	1 [15]	None	None	None	None	None	None	None	None	None	None	None	None	None
33	Pump	None	None	1 [14]	None	None	1 [14]	None	None	1 [14]	None	None	1 [14]	None	None	1.[14]
34	Radar Reflector	1	None	1	None	1	1	None	None	None	None	None	None	None	None	None
35	Rainwater collection device	1 [13,15]	None	None	1 [13,15]	None	None	None	None	None	None	None	None	None	None	None
36	Repair kit	None	None	1 [14]	None	None	1 [14]	None	None	1 [14]	None	None	1 [14]	None	None	1.[14]
37	Rudder and tiller	1 [16]	None	None	1 [16]	None	None	1 [16]	None	None	None	None	None	None	None	None
38	Sea anchor	1	2	1	1	2	1	1	2	1	None	None	None	None	None	None
39	Searchlight	1 [17]	None	1	1 [17]	None	1	1	None	1	None	None	None	None	None	None
40	Seasickness kit (kits per person).	1	1	None	1	1	None	None	None	None	None	None	None	None	None	None
41	Signal, orange smoke	2	2	None	2	1	None	None	None	None	None	None	None	None	None	None
42	Signal, red hand flare	12	12	None	12	6	None	6	6	None	6	6	None	None	None	None
43	Signal, red parachute flare	12	12	None	12	6	None	6	6	None	None	None	None	None	None	None
44	Skates and fenders (set)	1 [18]	None	None	1 [18]	None	None	1 [18]	None	None	1 [18]	None	None	1 [18]	None	None
45	Sponge	None	2	2 [14]	None	2	2 [14]	None	2	2 [14]	None	2	2 [14]	None	None	None
46	Survival Instructions	1	1	None	1	1	None	1	1	None	1	1	None	None	None	None
47	Table of lifesaving signals	1	1	None	1	1	None	None	None	None	None	None	None	None	None	None
48	Thermal protective aid (percent of persons).	10% [19]	10% [19]	10% [19]	10% [19]	10% [19]	10% [19]	None	None	None	None	None	None	None	None	None
49	Tool kit	1 [8]	None	None	1 [8]	None	None	1 [8]	None	None	1 [8]	None	None	1 [8]	None	None
50	Towline	1 [20]	None	1	1 [20]	None	1	1 [20]	None	1	1 [20]	None	1	1 [20]	None	1.
51	Water (liters per person)	3	1.5	None	3	1	None	None	None	None	None	None	None	None	None	None
52	Whistle	1	1	1	1	1	1	None	None	None	None	None	None	None	None	None

[1] (Reserved).
[2] Each liferaft approved for 13 persons or more must carry an additional bailer.
[3] Each lifeboat approved for 100 persons or more must carry an additional bilge pump, or be equipped with a powered bilge pump.
[4] Not required for inflated or rigid/inflated rescue boats.
[5] Not required for totally enclosed lifeboats.
[6] Required only for an open lifeboat provided with a mast and sail.
[7] (Reserved).
[8] Required only for motor-propelled lifeboats and rescue boats.
[9] Each liferaft equipped for 13 persons or more must carry an additional knife, that must either meet the same requirements as the first knife, or must be a jackknife approved under Subpart 160.043 of this chapter.
[10] A hatchet counts toward this requirement in rigid rescue boats.
[11] Not required for a lifeboat powered by a motor, or a hand-propelling gear approved under Subpart 160.034 of this chapter.
[12] Required only if the lifeboat carries an oil lantern under item 23.
[13] Not required for a lifeboat or liferaft on a mobile offshore drilling unit unless the unit is in international service as defined under § 107.111 of this chapter.
[14] Not required for a rigid rescue boat.
[15] Not required for a lifeboat with a protecting cover (item 8) that includes a rainwater collection device.
[16] Not required for a lifeboat with a permanently installed steering system.
[17] Required only on lifeboats built on or after July 1, 1986, and on Class 2 and Class 3 motor lifeboats built before July 1, 1986.
[18] Not required if the launching arrangement is such that skates and fenders are unnecessary.
[19] Sufficient thermal protective aids are required for at least 10% of the persons the survival craft is equipped to carry, but not less than 2.
[20] Required only if the lifeboat is also the rescue boat.

(d) *Buoyant apparatus and life floats.* Unless otherwise stated in this paragraph, each buoyant apparatus, inflatable buoyant apparatus and life float must carry the equipment specified for it in Table 199.175(d) under the vessel's category of service. Each item in the table is described below along with any exceptions or limitations, with the paragraph number corresponding to the item number in the table.

(1) *Boathook.* Each boathook must have a single hook and ball-point. The handle of each boathook must be—

(i) Of clear-grained white ash or the equivalent;

(ii) At least 38 mm (1½ in.) in diameter; and

(iii) At least 1.8 m (6 ft.) long.

(2) *Lifeline and pendants.* The lifeline and pendants must be as furnished by the manufacturer with the approved life float or buoyant apparatus. Replacement lifelines and pendants must meet the requirements in Subpart 160.010 of this chapter.

(3) *Paddle.* Each paddle must be at least 1.2 m (4 ft.) long and buoyant.

(4) *Painter.* The painter must—

(i) Be at least 30 m (100 ft.) long, but not less than 3 times the distance between the deck where the life floats and buoyant apparatus are stowed and the light draft of the vessel;

(ii) Have a breaking strength of at least 6.7 kN (1500 lb.), except that if the capacity of the life float or buoyant apparatus is 50 persons or more, the breaking strength must be at least 13.4 kN (3000 lb.);

(iii) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light; and

(iv) Be stowed in such a way that it runs out freely when the life float or buoyant apparatus floats away from the sinking vessel.

(5) *Water light.* The water light must be approved under Subpart 161.010 of this chapter, and must be attached to the life float or buoyant apparatus by a 12-thread manila, or equivalent lanyard, at least 5.5 m (18 ft.) long.

TABLE 199.175(d)

Item No.	Item	Ocean	Short Int'l. Voyage and Coastwise	Great Lakes	Lakes; Bays; and Sounds	Rivers
1	Boathook[1]	1	1	1	1	1
2	Lifeline and pendants	1	1	1	1	1
3	Paddles[1]	2	2	2	2	2
4	Painter	1	1	1	1	1
5	Water light[2]	1	1	1	None	None

[1] Not required to be carried on buoyant apparatus or inflatable buoyant apparatus.
[2] Not required on life floats or buoyant apparatus with a capacity of 24 persons or less.

Subpart C—Additional Requirements for Passenger Vessels

§ 199.200 General.

Each passenger vessel must meet the requirements in this subpart in addition to the requirements in Subparts A and B.

§ 199.201 Survival craft.

(a) *General.* Each survival craft on a passenger vessel must be approved by the Commandant (G–MVI) as follows:

(1) Each open lifeboat must meet Subpart 160.035 of this chapter.

(2) Each partially enclosed lifeboat must meet Subpart 160.035 of this chapter; and Regulations III/30.2, III/41, and III/42 of SOLAS 74/83.

(3) Each totally enclosed lifeboat must meet Subpart 160.035 of this chapter; and Regulations III/30.2, III/41, and III/44 of SOLAS 74/83.

(4) Each inflatable liferaft must meet Subpart 160.051 of this chapter; and Regulations III/30.2, III/38, and III/39 of SOLAS 74/83. Each inflatable liferaft on a passenger vessel in ocean or short international voyage service must have a capacity of 6 persons or more.

(5) Each rigid liferaft must meet Subpart 160.018 of this chapter; and Regulations III/30.2, III/38, and III/40 of SOLAS 74/83. Each rigid liferaft on a passenger vessel in ocean or short international voyage service must have a capacity of 6 persons or more.

(6) Each inflatable buoyant apparatus must be approved by the Commandant (G–MVI).

(b) *Ocean service.* Each passenger vessel in ocean service must carry the following:

(1) Totally enclosed or partially enclosed lifeboats.

(i) The lifeboats on each side of the vessel must have an aggregate capacity that will accommodate not less than 50% of the total number of persons permitted on board.

(ii) The OCMI may accept substitution of lifeboats by liferafts of equivalent total capacity provided that there are lifeboats on each side of the vessel with an aggregate capacity that will accommodate not less than 37.5% of the total number of persons permitted on board.

(2) Liferafts.

(i) The liferafts substituted for lifeboats under paragraph (b)(1)(ii) of this section must be served by launching appliances equally distributed on each side of the vessel.

(ii) In addition to any liferafts under paragraph (b)(1)(ii) of this section, liferafts must be provided having an aggregate capacity that will accommodate at least 25% of the total number of persons permitted on board.

(A) Stowage of these liferafts is not required to meet § 199.135(d).

(B) These liferafts must either be readily transferable for launching on either side of the vessel, or arranged for launching on one side of the vessel, provided that one or more liferafts with the same capacity are on the opposite side of the vessel. The liferaft or liferafts on the opposite side of the vessel must be in addition to the liferafts required under paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(C) These liferafts must be served by at least one launching appliance on each side of the vessel. These launching appliances must either be those under paragraph (b)(2)(ii) of this section, or equivalent appliances approved by the Commandant (G–MVI), capable of being used on both sides of the vessel.

(c) *Short international voyage or coastwise service.* Each passenger vessel in short international voyage service that meets the special standards of subdivision in § 171.068 of this chapter, and each passenger vessel in coastwise service must carry the following:

(1) Totally enclosed or partially enclosed lifeboats.

(i) The lifeboats must have an aggregate capacity that will accommodate not less than 30% of the total number of persons permitted on board.

(ii) The lifeboats must be equally distributed, as far as practicable, on each side of the vessel.

(2) Liferafts.

(i) The liferafts must have an aggregate capacity that, together with the lifeboats, will accommodate the total number of persons permitted on board. These liferafts must be served by launching appliances equally distributed on each side of the vessel.

(ii) In addition to the liferafts required under paragraph (c)(2)(i) of this section, liferafts must be provided with an aggregate capacity that will accommodate at least 25% of the total number of persons permitted on board.

(A) Stowage of these liferafts is not required to meet § 199.135(d).

(B) These liferafts must either be readily transferable for launching on either side of the vessel, or arranged for launching on one side of the vessel, provided that one or more liferafts with the same capacity are on the opposite side of the vessel. The liferaft or liferafts on the opposite side of the vessel must be in addition to the liferafts required under paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(C) These liferafts must be served by at least one launching appliance on each side of the vessel. These launching appliances must be those under paragraph (c)(2)(i) of this section, or equivalent appliances approved by the Commandant (G–MVI), capable of being used on both sides of the vessel.

(d) *Great Lakes service.* Each passenger vessel in Great Lakes service must carry the following:

(1) Totally enclosed or partially enclosed lifeboats.

(i) The lifeboats must have an aggregate capacity that will accommodate not less than 30% of the total number of persons permitted on board.

(ii) The lifeboats must be equally distributed, as far as practicable, on each side of the vessel.

(2) Liferafts.

(i) The liferafts must have an aggregate capacity that, together with the lifeboats, will accommodate the total number of persons permitted on board. These liferafts must be served by launching appliances equally distributed on each side of the vessel.

(ii) In addition to the liferafts required under paragraph (d)(2)(i) of this section, liferafts must be provided with an aggregate capacity that will accommodate at least 10% of the total number of persons permitted on board, or that will accommodate the capacity of the largest single survival craft on the vessel, whichever is the greater.

(A) Stowage of these liferafts is not required to meet § 199.135(d).

(B) These liferafts must be served by at least one launching appliance on each side of the vessel. The launching appliances must be those under paragraph (d)(2)(i) of this section, or equivalent appliances approved by the Commandant (G–MVI), capable of being used on both sides of the vessel.

(e) *Lakes, bays, and sounds, or river service.* Each passenger vessel in lakes, bays, and sounds service, or in river service must carry the following:

(1) Totally enclosed, partially enclosed, or open lifeboats.

(i) The lifeboats must have an aggregate capacity that will accommodate not less than 25% of the total number of persons permitted on board.

(ii) The lifeboats must be equally distributed, as far as practicable, on each side of the vessel.

(2) Liferafts. The liferafts must have an aggregate capacity that, together with the lifeboats, will accommodate the total number of persons permitted on board. These liferafts must be served by launching appliances equally distributed on each side of the vessel if the embarkation deck is more than 3 m (10 ft.) above—

(i) The waterline under normal operating conditions; or

(ii) The equilibrium waterline after being subjected to the assumed damage and subdivision requirements in Part 171 of this chapter.

(f) *Alternative: small vessels.* A passenger vessel less than 500 tons gross tonnage where the total number of persons permitted on board is less than 200, is not required to meet paragraph (b), (c), (d), or (e) of this section, if it meets the following:

(1) Liferafts must be provided on each side of the vessel with an aggregate capacity that will accommodate the total number of persons permitted on board.

(2) Unless the liferafts required under paragraph (f)(1) of this section can be readily transferred for launching on either side of the vessel, additional liferafts must be provided to bring the total capacity available on each side to at least 150% of the total number of persons permitted on board.

(3) If the rescue boat required under § 199.202 is also a lifeboat, it is included in the aggregate capacity required under paragraph (f)(1) of this section, provided that paragraph (f)(2) of this section is met.

(4) In the event of the largest survival craft on either side of the vessel being lost or rendered unserviceable, there must be sufficient survival craft available for use on that side to accommodate the total number of persons permitted on board.

(g) *Alternative: ferries and vessels in lakes, bays, and sounds, or river service.* A ferry not in ocean service or short international voyage service, or a passenger vessel in lakes, bays, and sounds service, or in river service, is not required to meet paragraph (c), (d), or (e) of this section, if it meets the following:

(1) Inflatable buoyant apparatus must be provided with an aggregate capacity that will accommodate the total number of persons permitted on board.

(2) Additional inflatable buoyant apparatus must be provided with an aggregate capacity not less than the larger of—

(i) 10% of the total number of persons on board; or

(ii) The capacity of the largest inflatable buoyant apparatus on board.

(3) Embarkation must be provided on each side of the vessel by at least one marine escape slide approved by the Commandant (G–MVI), if the embarkation deck is more than 3 m (10 ft.) above both—

(i) The waterline under normal operating conditions; and

(ii) The equilibrium waterline after being subjected to the assumed damage and subdivision requirements in Part 171 of this chapter.

(4) If a rescue boat required under § 199.202 is also a lifeboat, it is included in the aggregate capacity required under paragraph (g)(1) of this section.

(h) *Alternative: warm water operation; vessels not in ocean, short international voyage, or coastwise service.* During those periods of the year when the normal temperature of the water equals or exceeds 15 °C (59 °F) in the area where the vessel operates, a vessel not in ocean, short international voyage, or coastwise service is required to have 10% of the survival craft that would otherwise be required under paragraph (d), (e), (f), or (g) of this section.

(i) *Alternative: shallow water operation close to land; vessels not in ocean, short international voyage, or coastwise service.* No survival craft are required under this section on vessels that—

(1) Are not in ocean, short international voyage, or coastwise service; and

(2) Operate not more than 3 miles from land in water where the average depth of the channel does not exceed 1 m (39 in.).

§ 199.202 Rescue boats.

(a) *General: vessels 500 tons and over.* Each passenger vessel of 500 tons gross tonnage and over must carry at least one rescue boat on each side of the vessel. Each rescue boat must be approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/47 of SOLAS 74/83.

(b) *General: vessels less than 500 tons.* Each passenger vessel of less than 500 tons gross tonnage must carry at least one rescue boat. The rescue boat

must be approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/47 of SOLAS 74/83.

(c) *Alternative: use of lifeboat as rescue boat.* A lifeboat is accepted as a rescue boat if it also meets the requirements for rescue boats as specified in Regulation III/47 of SOLAS 74/83.

(d) *Alternative: vessels operating in harbors, sheltered lakes, or river service.* A vessel operating in harbors or sheltered lakes, or operating in river service is not required to carry a rescue boat approved as meeting Regulations III/30.2 and III/47 of SOLAS 74/83, if it carries a rescue boat meeting Subpart 160.056 of this chapter. The rescue boat must be equipped with a motor.

§ 199.203 Marshalling of liferafts.

(a) To permit efficient marshalling of liferafts, each passenger vessel in ocean, short international voyage, or coastwise service must have a lifeboat or rescue boat for each six liferafts when—

(1) Each lifeboat and rescue boat is loaded with its full complement of persons; and

(2) The minimum number of liferafts necessary to accommodate the remainder of the persons permitted on board have been launched.

(b) A passenger vessel in short international voyage or coastwise service which meets the special standards of subdivision in § 171.068 of this chapter, is not required to meet paragraph (a) of this section if it has a lifeboat or rescue boat for each nine liferafts when—

(1) Each lifeboat and rescue boat is loaded with its full complement of persons; and

(2) The minimum number of liferafts necessary to accommodate the remainder of the persons permitted on board have been launched.

§ 199.211 Ring life buoys.

(a) *General.* The minimum number of ring life buoys carried to meet § 199.70, is prescribed in Table 199.211.

TABLE 199.211

Length of vessel in meters (feet)	Minimum number of ring life buoys	
	Ocean and short international voyage service	Other than ocean and short int'l voyage service
Under 30 (98)	8	3
30 (98) and under 60 (196)	8	4
60 (196) and under 90 (297)	12	6
90 (297) and under 120 (393)	12	12
120 (393) and under 180 (590)	18	18
180 (590) and under 240 (787)	24	24
240 (787) and over	30	30

(b) *Small vessels in ocean or short international voyage service.* Notwithstanding § 199.70(a)(3), each passenger vessel under 60 m (196 ft.) in length in ocean or short international voyage service, must carry not less than six ring life buoys with floating electric water lights.

§ 199.212 Lifejackets: ocean or short international voyage service.

In addition to the lifejackets required under § 199.72, each passenger vessel in ocean or short international voyage service must carry lifejackets for not less than 5% of the total number of persons permitted on board. These lifejackets must be stowed in conspicuous places on deck or at muster stations.

§ 199.213 Lifejacket lights; ferries.

Notwithstanding the requirements of § 199.75(a), lifejackets on ferries are not required to be fitted with lifejacket lights.

§ 199.214 Immersion suits and thermal protective aids; ocean, short international voyage, coastwise, or Great Lakes service.

(a) Each passenger vessel in ocean, short international voyage, coastwise, or Great Lakes service must carry an immersion suit for each person—

(1) In command of a survival craft;

(2) Second in command of a lifeboat;

(3) Assigned to operate a survival craft; and

(4) Assigned to operate a survival craft launching appliance.

(b) The number of immersion suits for the crew of each lifeboat provided under paragraph (a) of this section must be at least three.

(c) In addition, the vessel must carry a thermal protective aid approved by the Commandant under Subpart 160.174 of this chapter for each person not provided with an immersion suit.

(d) The immersion suits and thermal protective aids under this section are not required if the vessel operates only on routes between 32° N and 32° S latitude.

§ 199.217 Station bill (muster list).

(a) The format of the station bill under § 199.80 used on a passenger vessel must be approved by the OCMI.

(b) Where the size of the crew permits, the station bill on a passenger vessel must include an emergency squad organized by the master to form the nucleus of a damage control party. This squad consists of persons specially trained in the use of the emergency and rescue equipment, and generally familiar with the vessel and fundamentals of damage control.

§ 199.220 Survival craft and rescue boat embarkation arrangements.

(a) Survival craft embarkation arrangements must be designed for—

(1) Each lifeboat to be boarded and launched either directly from the stowed position or from an embarkation deck, but not both; and

(2) Davit-launched liferafts to be boarded and launched from a position immediately adjacent to the stowed position or from a position to where, under § 199.135(d), the liferaft is transferred before launching.

(b) Each rescue boat must be able to be boarded and launched directly from the stowed position with the number of persons assigned to crew the rescue boat on board. Notwithstanding paragraph (a)(1) of this section, if the rescue boat is also a lifeboat and the other lifeboats are boarded and launched from an embarkation deck, the arrangements must be such that the rescue boat can also be boarded and launched from the embarkation deck.

§ 199.230 Stowage of survival craft.

(a) In order to meet § 199.133(a), each lifeboat on a passenger vessel of 80 m (262 ft.) in length and upwards, must be stowed where the after end of the lifeboat is not less than 1.5 times the

length of the lifeboat forward of the propeller.

(b) Each liferaft and each inflatable buoyant apparatus must be arranged for float-free launching.

§ 199.240 Muster stations.

Each passenger vessel must, in addition to meeting § 199.110, have passenger muster stations that—

(a) Are near the embarkation stations unless in the same location;

(b) Permit ready access for the passengers to the embarkation stations unless in the same location; and

(c) Have sufficient room to marshal and instruct the passengers.

§ 199.245 Survival craft embarkation and launching arrangements.

(a) Each passenger vessel davit-launched liferaft must be arranged to be rapidly boarded by its full complement of persons.

(b) All survival craft required for abandonment by the total number of persons permitted on board must be capable of being launched with their full complement of persons and equipment within a period of 30 min. from the time the abandon-ship signal is given.

§ 199.250 Fixed radio installation for lifeboats: international voyage.

Each passenger vessel on an international voyage carrying a Class A EPIRB as an alternative to a Category 1, 406 MHz Satellite EPIRB, must have a fixed radio installation meeting the regulations of the Federal Communications Commission at 47 CFR 80.267 in—

(a) At least one lifeboat where the total number of persons permitted on board is more than 199 but less than 1,500; and

(b) At least one lifeboat on each side of the vessel where the total number of persons permitted on board is 1,500 or more.

Subpart D—Additional Requirements for Cargo Vessels

§ 199.260 General.

Each cargo vessel must meet the requirements in this subpart in addition to the requirements in subparts A and B.

§ 199.261 Survival craft.

(a) *General.* Each survival craft on a cargo vessel must be approved by the Commandant (G–MVI) as follows:

(1) Each open lifeboat must meet Subpart 160.035 of this chapter.

(2) Each totally enclosed lifeboat must meet Subpart 160.035 of this chapter; and Regulations III/30.2, III/41, and III/44 of SOLAS 74/83.

(3) Each inflatable liferaft must meet Subpart 160.051 of this chapter; and Regulations III/30.2, III/38, and III/39 of SOLAS 74/83. Each inflatable liferaft on a cargo vessel in ocean or short international voyage service must have a capacity of 6 persons or more.

(4) Each rigid liferaft must meet Subpart 160.018 of this chapter; and Regulations III/30.2, III/38, and III/40 of SOLAS 74/83. Each rigid liferaft on a cargo vessel in ocean service must have a capacity of 6 persons or more.

(5) Each life float must meet Subpart 160.027 of this chapter.

(6) Each inflatable buoyant apparatus must be approved by the Commandant (G–MVI).

(b) *Ocean or coastwise service.* Each cargo vessel in ocean or coastwise service must carry the following:

(1) Totally enclosed lifeboats. The lifeboats on each side of the vessel must have an aggregate capacity that will accommodate the total number of persons permitted on board.

(2) One or more liferafts capable of being launched on either side of the vessel. The liferafts must have an aggregate capacity that will accommodate the total number of persons permitted on board. If the liferaft or liferafts can not be readily transferred for launching on either side of the vessel, the total capacity available on each side must be sufficient to accommodate the total number of persons permitted on board.

(c) *Alternative: ocean or coastwise service.* A cargo vessel in ocean or coastwise service is not required to meet paragraph (b) of this section, if it carries the following:

(1) One or more lifeboats capable of being free-fall launched over the stern of the vessel. The lifeboats must have an aggregate capacity that will accommodate the total number of persons permitted on board.

(2) Liferafts. The liferafts on each side of the vessel must have an aggregate capacity that will accommodate the total number of persons permitted on board. The liferafts on at least one side of the vessel must be served by launching appliances.

(d) *Alternative for vessels less than 85 m long and for nonself-propelled vessels: ocean or coastwise service.* A cargo vessel less than 85 m (278 ft.) in length in ocean or coastwise service, or a nonself-propelled vessel in ocean or coastwise service is not required to meet paragraphs (b) or (c) of this section, if it meets the following:

(1) One or more liferafts must be carried on each side of the vessel. The liferafts on each side must have an aggregate capacity that will accommodate the total number of persons permitted on board.

(2) Unless the liferafts required under paragraph (d)(1) of this section can be readily transferred for launching on either side of the vessel, additional liferafts must be provided to bring the total capacity available on each side to at least 150% of the total number of persons permitted on board.

(3) If the rescue boat required under § 199.262 is also a lifeboat, it is included in the aggregate capacity required under paragraph (d)(1) of this section, provided that the total survival craft capacity available on each side of the vessel is at least 150% of the total number of persons permitted on board.

(4) In the event of the largest survival craft on either side of the vessel being lost or rendered unserviceable, there must be sufficient survival craft available for use on that side to accommodate the total number of persons permitted on board.

(5) In calculating the capacity of survival craft on board the vessel, no individual survival craft is credited with a capacity greater than the total number of persons permitted on board.

(e) *Great Lakes or lakes, bays, and sounds service.* Each cargo vessel in Great Lakes or lakes, bays, and sounds service must meet the following:

(1) The vessel must have one or more totally enclosed lifeboats with an aggregate capacity sufficient to accommodate the total number of persons permitted on board.

(2) The vessel must have one or more liferafts with an aggregate capacity sufficient to accommodate the total number of persons permitted on board.

(3) The aggregate capacity of the lifeboats and liferafts on each side of the vessel must be sufficient to accommodate the total number of persons permitted on board.

(f) *Alternative for vessels less than 85 m long and for nonself-propelled vessels: Great Lakes service; lakes, bays, and sounds service; or vessels operating on the continental shelf of the United States.* A cargo vessel less than 85 m (278 ft.) in length in Great Lakes service; lakes, bays, and sounds service; or operating on the continental shelf of the United States; or a nonself-propelled vessel in Great Lakes service; lakes, bays, and sounds service; or operating on the continental shelf of the United States, is not required to meet paragraph (e) of this section, if it meets the following:

(1) One or more liferafts must be carried with an aggregate capacity that will accommodate the total number of persons permitted on board.

(2) Unless the liferafts required under paragraph (f)(1) of this section can be readily transferred for launching on either side of the vessel, additional liferafts must be provided to bring the total capacity available on each side to at least 100% of the total number of persons permitted on board.

(3) If the rescue boat required under § 199.262 is also a lifeboat, it is included in the aggregate capacity required under paragraph (f)(1) of this section, if the requirements under paragraph (f)(2) of this section are met.

(g) *River service.* Each cargo vessel in river service must have a combination of lifeboats, liferafts, or inflatable buoyant apparatus, that together with its rescue boat, provides an aggregate capacity that will accommodate the total number of persons permitted on board.

(h) *Additional liferaft for large vessels.* Each cargo vessel where the survival craft are stowed more than 100 m (328 ft.) from the stem must carry, in addition to the liferafts required under paragraphs (b)(2), (c)(2), or (e)(2) of this section, a liferaft stowed as far forward as is reasonable and practicable. Each cargo vessel where the survival craft are stowed more than 100 m (328 ft.) from the stern must carry, in addition to the liferafts required under paragraphs (b)(2), (c)(2), or (e)(2) of this section, a liferaft stowed as far aft as is reasonable and practicable. The requirement for the liferaft to float free under § 199.290(b) does not apply to a liferaft under this paragraph, provided it is arranged for quick manual release.

(i) *Alternative: warm water operation; vessels not in ocean or coastwise service and small vessels operating on the continental shelf of the United States in the Gulf of Mexico.* Lifeboats, liferafts, and inflatable buoyant apparatus are not required if life floats of a combined capacity to accommodate all persons permitted on board are carried on the following:

(1) Vessels not in ocean or coastwise service during those periods of the year when the normal temperature of the water equals or exceeds 15 °C (59 °F) in the area where the vessel operates.

(2) Vessels less than 500 tons gross tonnage operating exclusively on the continental shelf of the United States in the Gulf of Mexico.

(j) *Alternative: shallow water operation close to land; vessels not in ocean or coastwise service.* No survival craft are required under this section on vessels that—

(1) Are not in ocean or coastwise service; and

(2) Operate not more than 3 miles from land in water where the average depth of the channel does not exceed 1 m (39 in.).

§ 199.262 Rescue boats.

(a) *Ocean service.* Each cargo vessel in ocean service must carry at least one rescue boat. The rescue boat must be approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/47 of SOLAS 74/83. A lifeboat is accepted as a rescue boat if it also meets the requirements for a rescue boat.

(b) *Coastwise or Great Lakes service.* Each cargo vessel in coastwise or Great Lakes service must carry at least one rescue boat. The rescue boat must be approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/47 of SOLAS 74/83.

(1) A lifeboat is accepted as a rescue boat if it also meets the requirements for a rescue boat.

(2) A vessel that uses a motor-propelled work boat or launch in its normal operations is not required to carry a rescue boat if the work boat or launch meets the stowage, launching, and recovery requirements, and carries the same equipment as the rescue boat that would otherwise be required.

(c) *Lakes, bays, and sounds service.* Each cargo vessel in lakes, bays, and sounds service must carry at least one rescue boat. The rescue boat must be approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/47 of SOLAS 74/83.

(1) A lifeboat is accepted as a rescue boat if it also meets the requirements for a rescue boat.

(2) A vessel that uses a motor-propelled work boat or launch in its normal operations is not required to carry a rescue boat if the work boat or launch carries the same equipment as the rescue boat that would otherwise be required.

(3) A vessel operating in harbors or sheltered lakes is not required to carry a rescue boat approved by the Commandant (G–MVI) as meeting Regulations III/30.2 and III/47 of SOLAS 74/83, if it carries a rescue boat meeting Subpart 160.056 of this chapter.

(d) *River service.* Each cargo vessel in river service where the average depth of the channel exceeds 1 m (39 in.), must carry at least one rescue boat meeting Subpart 160.056 of this chapter. A vessel that uses a work boat or launch in its normal operations is not required to carry a rescue boat if the work boat or launch carries the same equipment as the rescue boat that would otherwise be required.

(e) *Alternative: vessels not in ocean service.* A rescue boat is not required for a vessel, other than a vessel in ocean service, if—

(1) The OCMI determines the vessel is arranged to allow a helpless person to be recovered from the water;

(2) Recovery of the helpless person can be observed from the navigating bridge; and

(3) The vessel does not regularly engage in operations that restrict its maneuverability.

(f) *Alternative: nonself-propelled vessels.* A rescue boat is not required on a nonself-propelled vessel if the vessel is normally always—

(1) Under tow;

(2) Moored to or alongside a mobile offshore drilling unit or self-propelled vessel; or

(3) Moored to shore.

§ 199.271 Ring life buoys.

(a) *Self-propelled vessels.* For a self-propelled vessel, the minimum number of ring life buoys carried to meet § 199.70, is prescribed in Table 199.271.

TABLE 199.271

Length of vessel in meters (feet)	Minimum number of ring life buoys	
	Ocean service	Other than ocean service
Under 30 (98)	8	3
30 (98) and under 60 (196)	8	4
60 (196) and under 100 (328)	8	6
100 (328) and under 150 (492)	12	12
150 (492) and under 200 (656)	18	18
200 (656) and under 250 (820)	24	24

TABLE 199.271—Continued

Length of vessel in meters (feet)	Minimum number of ring life buoys	
	Ocean service	Other than ocean service
250 (820) and over	30	30

(b) *Nonself-propelled vessels.* Each nonself-propelled vessel must have one ring life buoy at each end of the vessel.

(c) *Small vessels: not in ocean service.* Notwithstanding the requirements of § 199.70(a)(3), a cargo vessel is not required to have any ring life buoys with water lights if it is—

(1) Under 30 m (98 ft.) in length; and

(2) Not in ocean service.

§ 199.272 Lifejackets.

In addition to the lifejackets required under § 199.72, each vessel with a liferaft under § 199.261(h) of this chapter must have enough lifejackets to equal the capacity of the liferaft stowed at the liferaft station.

§ 199.273 Immersion suits: ocean, coastwise, or Great Lakes service.

(a) This section applies to each vessel in ocean, coastwise, or Great Lakes service, except those operating on routes between 32°N and 32°S latitude.

(b) Each vessel must carry an immersion suit for each person permitted on board. A child/small adult size immersion suit must be provided for each person smaller than the lower size limit of the adult immersion suits.

(c) In addition to the immersion suits required under paragraph (b) of this section, the engine room, pilot house, bow lookout station, and each work station and industrial work site must have enough immersion suits to equal the number of persons normally on watch in or assigned to the station at one time. However, an immersion suit is not required at a watch station, work station, or work site for a person whose cabin, stateroom, or berthing area (and the immersion suits stowed in that location) is readily accessible to the station or site.

(d) The immersion suits required under this section count toward meeting the requirements of § 199.73.

§ 199.280 Survival craft embarkation and launching arrangements: ocean, coastwise, or Great Lakes service.

(a) This section applies to vessels in ocean, coastwise, or Great Lakes service.

(b) Each lifeboat must be arranged to be boarded and launched directly from the stowed position.

(c) Each davit-launched liferaft must be arranged to be boarded and launched from a position immediately adjacent to the stowed position or from a position to where the liferaft is transferred under § 199.135(d).

(d) In order to meet § 199.150(g), each lifeboat and davit-launched liferaft on a cargo vessel must be arranged to be boarded by its full complement of persons within 3 min. from the time the instruction to board is given.

(e) All survival craft required for abandonment by the total number of persons permitted on board must be capable of being launched with their full complement of persons and equipment within 10 min. from the time the abandon-ship signal is given.

§ 199.290 Stowage of survival craft.

(a) In order to meet § 199.133(a), each lifeboat on a cargo vessel—

(1) 80 m (262 ft.) in length and upwards but less than 120 m (393 ft.) in length, must be stowed with the after end of the lifeboat not less than one length of the lifeboat forward of the propeller; and

(2) 120 m (393 ft.) in length and upwards, must be stowed with the after end of the lifeboat not less than 1.5 times the length of the lifeboat forward of the propeller.

(b) Each liferaft, other than those required under § 199.261(h), and each inflatable buoyant apparatus must be arranged for float-free launching.

Subpart E—Additional Requirements for Tank Vessels

§ 199.300 General.

Except as provided in this subpart, tank vessels must meet the requirements for cargo vessels in Subpart D.

§ 199.310 Survival craft.

(a) Each lifeboat on a tank ship certificated to carry crude, product, chemicals, or liquified gases, emitting toxic vapors or gases; must be a lifeboat with a self-contained air support system approved by the Commandant (G–MVI) as meeting Subpart 160.035 of this chapter; and Regulations III/30.2, III/41, III/44, and III/45 of SOLAS 74/83.

(b) Each lifeboat on a tank ship certificated to carry crude, product, chemicals, or liquified gases, having a flashpoint less than 60 °C (closed cup test); must be a fire-protected lifeboat approved by the Commandant (G–MVI) as meeting Subpart 160.035 of this chapter; and Regulations III/30.2, III/41, III/44, III/45, and III/46 of SOLAS 74/83 A fire-protected lifeboat must not be of aluminum construction in the hull or canopy.

(c) Substitution of liferafts for lifeboats under § 199.261(d) is not permitted unless the tank vessel is less than 500 tons gross tonnage and not in ocean service.

(d) Each stowage position and each muster and embarkation station for a survival craft on a tank vessel other than the liferaft required under § 199.261(h) of this subchapter, must be in a location—

(1) Not over a cargo tank; and

(2) Protected from fire and explosion in the cargo tank area by the deckhouse, or A–60 divisions under § 32.57–5(b) of this chapter, or both.

§ 199.320 Survival craft embarkation and launching arrangements: ocean, coastwise, or Great Lakes service.

(a) This section applies to vessels in ocean, coastwise, or Great Lakes service.

(b) Notwithstanding the requirements of § 199.150(b), each launching appliance on a tank ship carrying crude, product, chemicals, or liquified gases, together with its lowering and recovery gear, must be arranged in a way that the fully equipped survival craft it serves can be safely lowered on the lower side of the vessel at the angle of heel after damage allowed under—

(1) MARPOL 73/78 in the case of an oil tanker;

(2) The IBC Code in the case of a chemical tanker; or

(3) The IGC Code in the case of a gas carrier.

(c) Each launching appliance on a tank ship certificated to carry crude, product, chemicals, or liquified gases, having a flashpoint less than 60 °C (closed cup test); must not be of aluminum construction.

Subpart F—Additional Requirements for Special Purpose Ships

§ 199.400 General.

(a) This subpart applies to the following vessels:

(1) Oceanographic research vessels. Scientific personnel on an oceanographic research vessel are "special personnel" for the purposes of this subpart.

(2) Offshore supply vessels. Offshore workers on an offshore supply vessel are "special personnel" for the purposes of this subpart.

(b) The term "passenger" wherever it is used in Subparts A, B, or C means one of the special personnel on a special purpose ship.

§ 199.405 Lifesaving appliance requirements.

(a) Each special purpose ship permitted to carry more than 50 special personnel must meet the requirements for passenger vessels in Subpart C, except that the lifesaving appliance requirements for passenger vessels on short international voyages do not apply.

(b) Each special purpose ship permitted to carry not more than 50 special personnel must meet the requirements for cargo and miscellaneous vessels in Subpart D, unless it meets the subdivision requirements for ships permitted to carry more than 50 special personnel under the IMO Code of Safety for Special Purpose Ships.

(c) Each special purpose ship permitted to carry not more than 50 special personnel, but meeting the subdivision requirements for ships permitted to carry more than 50 special personnel under the IMO Code of Safety for Special Purpose Ships, must meet either the lifesaving appliance requirements for passenger vessels in Subpart C or the requirements for cargo and miscellaneous vessels in Subpart D.

(d) Notwithstanding the requirements of paragraph § 199.150(a), a self-elevating offshore supply vessel, known in the industry as a "liftboat", is not required to have launching appliances for its liferafts.

§ 199.410 Rescue boats: special purpose ships operating on the continental shelf of the United States.

A rescue boat is not required under § 199.202 or § 199.262 for a special purpose ship operating on the continental shelf of the United States, if all of the following are demonstrated to the satisfaction of the Commandant (G-MVI):

(a) The vessel is arranged to allow a helpless person to be recovered from the water.

(b) Recovery of the helpless person can be observed from the navigating bridge.

(c) The vessel does not regularly engage in operations that restrict its maneuverability.

Subpart G—Additional Requirements for Nautical School Ships

§ 199.500 General.

(a) This subpart applies to public nautical school ships and civilian nautical school ships.

(b) In addition to a regular passenger, the term "passenger" wherever it is used in Subparts A, B, or C includes each—

(1) Student;

(2) Cadet; and

(3) Instructor who is not also a member of the crew.

§ 199.505 Lifesaving appliance requirements.

(a) Each nautical school ship which meets the structural fire protection requirements for a passenger vessel of the same size and service, must meet the lifesaving appliance and arrangement requirements for passenger vessels in Subpart C.

(b) Each nautical school ship which does not meet the structural fire protection requirements for a passenger vessel of the same size and service, must meet the lifesaving appliance and arrangement requirements for cargo vessels in Subpart D.

(c) Notwithstanding the requirements under § 199.150(e), the release gear is not required to be of the same type on various lifeboats and rescue boats on a nautical school ship.

Subpart H—Additional Requirements for Mobile Offshore Drilling Units

§ 199.600 General.

(a) For the purposes of this subpart, a "drillship" is a surface type mobile offshore drilling unit (unit) that is not a column stabilized unit as defined in § 107.111 of this chapter.

(b) Each mobile offshore drilling unit (unit), other than a drillship, must meet the requirements in this subpart in addition to the requirements in Subparts A and B for a vessel in ocean service.

(c) Each drillship must meet the requirements in Subpart E for an oil tanker in ocean service carrying a cargo having a flashpoint less than 60°C (closed cup test).

§ 199.605 Survival craft.

(a) *General.* Each survival craft on a unit must be one of the following:

(1) A totally enclosed, fire-protected lifeboat approved by the Commandant (G-MVI) as meeting Subpart 160.035 of this chapter; and Regulations III/30.2, III/41, III/44, III/45, and III/46 of SOLAS 74/83. A fire-protected lifeboat must not be of aluminum construction in the hull or canopy.

(2) An inflatable liferaft approved by the Commandant (G-MVI) as meeting Subpart 160.051 of this chapter; and Regulations III/30.2, III/38, and III/39 of SOLAS 74/83. Each inflatable liferaft must have a capacity of 6 persons or more.

(3) A rigid liferaft approved by the Commandant (G-MVI) as meeting Subpart 160.018 of this chapter; and Regulations III/30.2, III/38, and III/40 of SOLAS 74/83. Each rigid liferaft must have a capacity of 6 persons or more.

(b) *Lifeboats and liferafts.* Each unit must carry the following:

(1) Totally enclosed fire-protected lifeboats installed in at least two widely separated locations on different sides or ends of the unit. The arrangement of the lifeboats must provide sufficient capacity to accommodate the total number of persons permitted on board if—

(i) All the lifeboats in any one location are lost or rendered unusable; or

(ii) All the lifeboats on any one side or end of the unit are lost or rendered unusable.

(2) Float-free liferafts. The float-free liferafts must have an aggregate capacity that will accommodate the total number of persons permitted on board. Notwithstanding the requirements of § 199.150(a), these liferafts are not required to be served by launching appliances.

(c) *Alternative: certain self-elevating units.* In the case of a self-elevating unit where, due to its size or configuration, lifeboats can not be located in the widely separated locations required under paragraph (b)(1) of this section, the OCMI may require—

(1) The lifeboats to have an aggregate capacity to accommodate the total number of persons permitted on board; and

(2) Liferafts served by launching appliances of an aggregate capacity to accommodate the total number of persons permitted on board. These liferafts may be the float-free liferafts under paragraph (b)(2) of this section, or liferafts in addition to the float-free liferafts.

§ 199.610 Rescue boats.

Each unit must carry at least one rescue boat. The rescue boat must be approved by the Commandant (G-MVI)

as meeting Regulations III/30.2 and III/47 of SOLAS 74/83. A lifeboat is accepted as a rescue boat if it also meets the requirements for a rescue boat.

§ 199.630 Ring life buoys.

(a) Each unit must have at least eight ring life buoys to meet § 199.70.

(b) The releasing mechanism for each ring life buoy with a smoke signal required under § 199.70(c) must be capable of operation from the navigating bridge, main control station, or a location readily available to personnel on board.

§ 199.640 Immersion suits.

(a) This section applies to each unit operating in any ocean or in the Great Lakes, except those operating between 32°N and 32°S latitude.

(b) Each unit must carry an immersion suit for each person permitted on board. A child/small adult size immersion suit must be provided for each person smaller than the lower size limit of the adult immersion suits.

(c) In addition to the immersion suits required under paragraph (b) of this section, each watch station, work station, and industrial work site must have enough immersion suits to equal the number of persons normally on watch in, or assigned to, the station or site at one time. However, an immersion suit is not required at a station or site for a person whose cabin or berthing area (and the immersion suits stowed in that location) is readily accessible to the station or site.

(d) The immersion suits required under this section count toward meeting the requirements of § 199.73.

§ 199.645 Station bill.

The requirements in § 199.80 applying to the crew, also include the industrial personnel assigned to the unit. The requirements in § 199.80 applying to passengers, apply to visitors and other persons on board not regularly employed on the unit. In addition to the requirements in § 199.80, the station bill must—

(a) Cover the duties of the crew in case of collisions or other serious casualties, and

(b) Cover the duties of the crew in case of severe storms.

§ 199.650 Survival craft embarkation and launching arrangements.

(a) Each lifeboat must be arranged to be boarded and launched directly from the stowed position.

(b) In order to meet § 199.150(g), each lifeboat on a unit must be arranged to be boarded by its full complement of persons within 3 min. from the time the instruction to board is given.

(c) All lifeboats required for abandonment by the total number of persons permitted on board must be capable of being launched with their full complement of persons and equipment within 10 min. from the time the signal to abandon the unit is given.

(d) Each survival craft must be arranged to clear each leg, column, footing, brace, mat, and each similar structure below the hull of a self-elevating unit and below the upper hull of a column stabilized unit, with the unit in an intact condition.

(1) The survival craft is not required to be arranged to be launched down the straight side of the unit as required under § 199.120(b), if it is mounted on a structure intended to provide clearance from lower structures of the unit.

(2) The OCMI may allow a reduction in the total number of survival craft meeting this requirement when the unit is in the transit mode and the number of personnel on board is reduced. In such cases, survival craft sufficient to meet § 199.605 of this chapter must be available for use by the total number of personnel remaining on board.

(e) When the unit is under any unfavorable condition such as maximum airgap, lightest transit or operational condition, or any damaged condition under Part 174, Subpart C of this chapter,—

(1) Notwithstanding the requirements under § 199.150(b), survival craft launching appliances must be capable of operation;

(2) Falls, where used, must be long enough for survival craft to reach the water; and

(3) Lifeboats with an aggregate capacity that will accommodate the total number of persons permitted on board must be capable of being launched safely, and clear of any obstruction. The location and orientation of each lifeboat must take into consideration the in-water operating capabilities of the lifeboat.

(f) Each launching appliance and supporting structure must not be of aluminum construction.

(g) In place of the embarkation ladders required under § 199.110(e), each unit must be provided with at least two widely separated fixed metal ladders or stairways extending from the deck to the surface of the water. If a fixed ladder can not be installed, the OCMI will approve an alternate means of escape with sufficient capacity to permit all persons permitted on board to safely descend to the waterline.

(1) Each inclined fixed ladder must meet the requirements under § 108.159 of this chapter.

(2) Each vertical fixed ladder must meet the requirements under § 108.160 of this chapter for fixed ladders, except that the vertical bars in cages must be open at least 500 mm (20 in.) on one side throughout the length of the ladder.

(3) An alternate means of escape must have sufficient capacity to permit all persons permitted on board to safely descend to the waterline within 10 minutes from the time the signal to start is given.

(h) Means of abandonment, such as portable slides, safety booms, moveable ladders, elevators, and controlled descent devices must be approved by the Commandant (G–MVI).

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

2. The authority citation for Part 30 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 30.01–5 [Amended]

3. By removing and reserving paragraph (b)(3) of § 30.01–5.

4. By adding a new Subpart 30.35 to read as follows:

Subpart 30.35—Lifesaving Appliances and Arrangements

§ 30.35–1 General—TB/ALL.

Lifesaving appliances and arrangements on tank vessels must meet Subchapter W of this chapter.

PART 31—INSPECTION AND CERTIFICATION

5. The authority citation for Part 31 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3307; 49 CFR 1.46.

Subpart 31.01—General

6. By revising paragraph (a) of § 31.01–1 to read as follows:

§ 31.01–1 Inspections required—TB/ALL.

(a) The Coast Guard inspects each tank vessel biennially, annually, or more often if necessary, to determine that it meets the laws, the regulations in this chapter, and the regulations in 33 CFR Chapter I.

* * * * *

7. By adding paragraph (c) to § 31.01–5 to read as follows:

§ 31.01–5 Scope of initial inspections—TB/ALL.

* * * * *

(c) The following tests and inspections and the tests and inspections in § 31.10–15(d)(7) through § 31.10–15(d)(11) must be conducted for each initial inspection for certification. The tests and inspections under paragraph (c)(1) of this section must also be conducted when each new davit or winch is installed on the vessel. The tests and inspections under paragraph (c)(2) of this section must also be conducted when each new free-fall launching system is installed on the vessel. The test under paragraph (c)(3) of this section must also be conducted when each new lifeboat or rescue boat is installed on the vessel. The inspection under paragraph (c)(6) of this section must also be conducted when each new lifeboat, rescue boat, liferaft, davit, winch, or other launching appliance is installed on the vessel. The test under paragraph (c)(7) of this section must also be conducted when each new life buoy quick release device is installed on the vessel.

(1) Each launching appliance using falls and a winch for a rescue boat, davit-launched liferaft, or lifeboat including any auxiliary davit system for a free-fall lifeboat must be tested as follows:

(i) The lifeboat, rescue boat or davit-launched liferaft must be loaded with all of its equipment or the deadweight equivalent. In addition, the davit-launched liferaft must be loaded with a 75 kg (165 lb.) weight to simulate the load of one person. A davit-launched liferaft is not required for this test if an appropriate test weight is used. The boat or liferaft must be lowered from the embarkation station and launched into the water using the normal launching procedure. If a test weight is substituted for the davit-launched liferaft, the weight must be "launched" onto a surface that will support its weight. The rescue boat must then be loaded with the deadweight equivalent of its full rescue boat complement using a weight of 75 kg (165 lb.) per person. In the case of a lifeboat or rescue boat launching appliance, the boat must then be recovered by the launching appliance. In the case of a liferaft launching appliance, the hand-operated quick-return mechanism must be used to recover the fall.

(A) There must be no deformation of or damage to the launching appliance or its connections to the vessel.

(B) The lowering speed must meet § 199.153(j) of this chapter, and the falls must meet § 199.153(g) of this chapter. For a multiple drum winch, the falls must wind off the drums at the same rate when lowering, and wind onto the drums evenly in a level wrap at the same rate when hoisting.

(C) The release mechanism control in a boat must open all hooks simultaneously and release the boat into the water.

(D) The automatic disengaging apparatus for a davit-launched liferaft must open and release the liferaft or test weight after the apparatus is set to open automatically and the liferaft or test weight is set on the surface.

(E) The recovery of the boat must meet § 199.153(l) of this chapter, and if the boat is a rescue boat, § 199.160(d) of this chapter.

(F) For each launching device equipped to recover a boat by power, including a launching device with a portable power source, the limit switches or other safety devices must automatically cut off the power before the boat reaches the stops to avoid overstressing the falls and davits.

(G) The hand-operated recovery gear for a lifeboat or rescue boat launching appliance must be capable of moving the boat into its stowed position where the boat can be safely and properly secured.

(H) The operation of the hand-operated quick-return mechanism on a davit-launched liferaft launching appliance must be smooth, rapid, and easy enough for one person to recover the fall.

(ii) If the lowering of a lifeboat or rescue boat is controlled from within the boat by a control wire wound on an auxiliary drum on the winch, the launching of the boat must be tested with the boat loaded as under paragraph (c)(1)(i) of this section, but with an operator inside.

(A) The mass of the control wire must be sufficient to overcome the friction of the sheaves used on the control wire when the launching appliance is being operated by the on-deck controls.

(B) The control wire must properly operate the winch brake.

(C) The winch brake must not be affected by the mass of the fully extended control wire.

(D) There must be sufficient length of control wire available inside the boat to operate the winch brake during all stages of lowering.

(E) The free end of the control wire must be retained within the boat until the boat is released from the falls by the operator.

(iii) The test procedure under paragraph (c)(1)(i) of this section must be repeated with the lifeboat, rescue boat or liferaft loaded with weight equivalent to all of its equipment and full complement of persons, plus 10% of the total weight of the loaded boat or liferaft. In the case of a davit-launched liferaft, the automatic disengaging apparatus must be set to release. The on-deck launching controls must be used for this test, with the boat or liferaft being stopped after it has reached its maximum lowering speed, and then at approximately 2 m (6 ft.) intervals. In the case of a lifeboat or rescue boat, when the boat reaches a position just above the water, it must be released from the falls using the on-load release mechanism control.

(A) There must be no deformation of or damage to the launching appliance or its connections to the vessel.

(B) The lowering speed must meet § 199.153(i) and 199.153(k) of this chapter, and the falls must meet § 199.153(g) of this chapter.

(C) The launching appliance must bring the boat or raft to a stop within 1 m (39 in.) by application of the brake by the winch counterweight alone.

(D) The brake action must be smooth and positive.

(E) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(F) The boat or raft must begin to lower each time the brake is released. No additional force is permitted.

(G) The release mechanism control in a boat must open all hooks simultaneously and release the boat into the water.

(H) The automatic disengaging apparatus for a davit-launched liferaft must not release the liferaft or test weight until the liferaft or test weight is set on the surface.

(iv) The release apparatus for a davit-launched liferaft must be tested to determine that it will release under a towing strain. The liferaft or test weight loaded as required under paragraph (c)(1)(iii) of this section must be suspended just above the surface and the release apparatus set to open automatically. A horizontal towing strain sufficient to pull the falls 5° from vertical must be applied to the liferaft or test weight and the liferaft lowered. The release apparatus must release the liferaft or test weight as it is set on the surface.

(v) If any winch brake surface is exposed to the weather, the test under paragraph (c)(1)(iii) of this section must be conducted with the brake surfaces dry and repeated with the brake surfaces wet. The brake must stop the winch when the brake surface is wet, but the stopping distance requirement does not apply.

(2) Each free-fall launched lifeboat and launching system must be tested as follows with the vessel at its lightest seagoing draft:

(i) The lifeboat loaded with only its normal equipment or the deadweight equivalent of the equipment, must be launched into the water. After launching, the boat must be retrieved and examined.

(A) The free-fall release mechanism must operate properly and release the boat from the launching appliance.

(B) The launching system must operate smoothly, must launch the boat into the water at the intended angle, and must not show any evidence of improper operation.

(C) The lifeboat must not show any evidence of instability in the air or in the water.

(D) There must be no deformation of or damage to the lifeboat, the launching appliance or its connections to the vessel.

(ii) The procedure under paragraph (c)(2)(i) of this section must be repeated with each seat in the lifeboat loaded with 75 kg (165 lb.) of deadweight properly secured in place to simulate the weight of one person.

(A) The inspections required under paragraphs (c)(2)(i)(A) through (c)(2)(i)(D) of this section must be performed.

(B) Each seat and its mounting arrangements must be closely inspected. There must be no deformation or damage to any seat or its mounting arrangements.

(C) If the inspector has reason to believe that the boat is not being launched in a safe and proper manner, the inspector may order the test under this paragraph (paragraph (c)(2)(ii) of this section) to be repeated with the boat instrumented with acceleration monitoring equipment. The data must be compared with the approval test data to determine whether or not the boat is being launched in a safe and proper manner.

(iii) The procedure under paragraph (c)(2)(i) of this section must be repeated with at least one operator aboard the lifeboat. The rest of the seats in the lifeboat must either be empty, loaded with deadweight, or with personnel to the satisfaction of the inspector. The launching of the lifeboat must be completely controlled by the personnel in the lifeboat.

(A) The inspections required under paragraphs (c)(2)(i)(A) through (c)(2)(i)(D) of this section must be performed.

(B) There must be no injury to any of the personnel in the lifeboat.

(3) Each lifeboat and rescue boat must be operated in the water for at least 2 hr. During this time, the propulsion system must be operated both forward and astern. At least 1 hr. of this running time must be with the propulsion system operating at full speed. Each boat system, such as any powered bilge pump, water spray system, or air supply system, must be operated.

(i) The boat and each of its systems must operate properly without overheating or being damaged.

(ii) The boat must not have any evident leakage through the hull or around any through-hull fitting.

(4) An abandon-ship simulation must be held to determine that all survival craft required for abandonment by the total number of persons permitted on board, can be launched with their full complement of persons and equipment within 10 min. from the time the abandon-ship signal is given.

(i) This simulation must include loading and launching of sufficient survival craft to demonstrate that the requirement can be met.

(ii) This test is not required if the Coast Guard has witnessed a successful test on a sister vessel with the same lifesaving appliance arrangements.

(5) One lifeboat and one rescue boat of each type on board must be launched with the vessel proceeding at a speed of approximately 5 knots. No particular loading of the boat is required. The boat must not give any indication that it is unstable or out of control during the launching procedure.

(6) The installation of each lifeboat, rescue boat, liferaft and launching appliance must be inspected to determine that it meets each condition of its approval, as listed on its Certificate of Approval (Form CGHQ 10030).

(7) The quick release device for ring life buoys required for certain vessels under § 199.70(c) of this chapter, must be tested to demonstrate that the ring life buoy and its attachments drop clear of the side of the vessel when released. A self-activating smoke signal is not required for this test if a dummy device of comparable size and weight is used.

Subpart 31.05—Certificate of Inspection

8. By revising paragraph (a) of § 31.05–1 to read as follows:

§ 31.05–1 Issuance of certificate of inspection—TB/ALL.

(a) When a tank vessel is found to meet the laws, the regulations in this chapter, and applicable regulations in 33 CFR Chapter I, the Officer in Charge, Marine Inspection issues a certificate of inspection.

* * * * *

Subpart 31.10—Inspections

9. By adding paragraphs (d) and (e) to § 31.10–15 to read as follows:

§ 31.10–15 Inspection for certification—TB/ALL.

* * * * *

(d) At each inspection for certification, the following inspections and tests must be conducted in the presence of a marine inspector, or as otherwise directed by the OCMI:

(1) Each air tank provided for buoyancy on a lifeboat, liferaft, buoyant apparatus or life float, must be tested and demonstrated to be airtight.

(2) Each lifeboat and rescue boat gravity davit including each auxiliary davit system for a free-fall lifeboat, and each davit-launched liferaft launching device must be used to lower the boat or liferaft from its stowed position to a point near the water using the on-deck launching appliance controls. This test must be conducted twice; once with the boat or liferaft loaded with all equipment and additional weight of not more than one person, and a second time with the weight of a full load of persons and equipment. A davit-launched liferaft is not required for this test if an appropriate test weight is used. During the lowering, the brake must be applied and released at least five times.

(i) The launching appliance must bring the boat, liferaft, or test weight to a stop by application of the brake by the winch counterweight alone.

(ii) The brake action must be smooth and positive.

(iii) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(iv) Lowering must begin each time the brake is released. No additional force is permitted.

(3) Each lifeboat and rescue boat on a davit must be lowered to a point just above the water and evenly loaded until the total weight of the boat equals the "B" weight on the boat data plate. If the boat is equipped with mechanical disengaging apparatus, the release mechanism control must be operated and must open all hooks simultaneously and release the boat into the water properly. There must be no evident damage or deformation of the boat, the launching appliance, or its connections to the vessel.

(4) Each free-fall launched lifeboat and launching system must be tested

with the lifeboat loaded with only its normal equipment or the deadweight equivalent of the equipment. The lifeboat must be launched into the water. After launching, the boat must be retrieved and examined.

(i) The free-fall release mechanism must operate properly and release the boat from the launching appliance.

(ii) The launching system must operate smoothly, must launch the boat into the water at the intended angle, and must not show any evidence of improper operation.

(iii) The lifeboat must not show any evidence of instability in the air or in the water.

(iv) There must be no deformation of or damage to the lifeboat, the launching appliance or its connections to the vessel.

(5) The procedure under paragraph (d)(4) of this section must be repeated with each seat in the lifeboat loaded with 75 kg (165 lb.) of deadweight properly secured in place to simulate the weight of one person.

(i) The inspections required under paragraphs (d)(4)(i) through (d)(4)(iv) of this section must be performed.

(ii) Each seat and its mounting arrangements must be closely inspected. There must be no deformation or damage to any seat or its mounting arrangements.

(6) If the inspector has reason to believe that the free-fall boat is not being launched in a safe and proper manner, the inspector may order the test under paragraphs (d)(4) and (d)(5) of this section to be repeated with the boat instrumented with acceleration monitoring equipment. The data must be compared with the approval test data to determine whether or not the boat is being launched in a safe and proper manner.

(7) The procedure under paragraph (d)(4) of this section must be repeated with at least one operator aboard the lifeboat. The rest of the seats in the lifeboat must either be empty, loaded with deadweight, or with personnel to the satisfaction of the inspector. The launching of the lifeboat must be completely controlled by the personnel in the lifeboat.

(A) The inspections required under paragraphs (d)(4)(i) through (d)(4)(iv) of this section must be performed.

(B) There must be no injury to any of the personnel in the lifeboat.

(8) The air supply system of each gas protected and fire protected lifeboat must be checked by—

(i) determining that the air regulator is operating properly either by discharging one or more of the air supply cylinders through the regulator, or by checking the flow rate on a test apparatus; and

(ii) making sure each air supply cylinder is fully charged and meets § 147.04–1(a) of this chapter.

(9) The water spray system of each fire protected lifeboat must be checked by operating the pump and determining that all sprinkler heads are operating properly and provide a uniform flow of water over the surface of the lifeboat.

(10) Each davit-launched liferaft launching appliance must be loaded with a weight equal to the liferaft loaded with its full load of persons and equipment. The weight must be lowered to a point just above the water, dock or other surface that will support the weight. The automatic disengaging apparatus control must be set to release, and must open when the weight is lowered to and supported by the surface. There must be no evident damage or deformation of the automatic disengaging apparatus, launching appliance, or its connections to the vessel.

(11) Each lifejacket, immersion suit, and work vest must be examined to determine that it is in serviceable condition. Each lifejacket, immersion suit, and work vest not in serviceable condition must be either repaired, or destroyed and removed from the vessel. The marine inspector may mark the lifejackets, immersion suits, and work vests to indicate that they have been inspected and passed.

(12) The control apparatus for each electrically-controlled launching appliance winch must be opened, inspected, and determined to be in serviceable condition.

(13) Each inflatable liferaft and inflatable lifejacket must be inspected to determine that it has been serviced under § 35.90–80 of this chapter.

(14) Each hydrostatic release unit must be inspected to determine that it has been serviced under § 35.90–90 of this chapter.

(15) Each other item of lifesaving equipment on the vessel must be inspected to determine that it is in serviceable condition. Each item not in serviceable condition must be repaired or replaced. Each item of survival equipment with an expiration date on it must be replaced if the expiration date has passed.

(16) An abandon-ship drill must be held. The marine inspector specifies the nature of the emergency to be simulated.

PART 33—LIFESAVING EQUIPMENT

10. By removing and reserving Part 33.

10a. The following Table of Contents for Part 35 reflects new subparts to read as follows:

PART 35—OPERATIONS

Subpart 35.00—Incorporation by Reference

Sec.
35.00–1 Incorporation by reference.

Subpart 35.01—Special Operating Requirements

* * * * *

Subpart 35.11—Manning of Survival Craft and Supervision

35.11–1 Certificate of proficiency—TB/ALL.
35.11–5 Manning and supervision—TB/ALL.
* * * * *

Subpart 35.90—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

35.90–20 Operational readiness—TB/ALL.
35.90–30 Maintenance—TB/ALL.
35.90–40 Maintenance of falls—TB/ALL.
35.90–50 Spare parts and repair equipment—TB/ALL.
35.90–60 Weekly Maintenance and inspection—TB/ALL.
35.90–70 Monthly inspections—TB/ALL.
35.90–73 Quarterly inspections—TB/ALL.
35.90–75 Annual inspection and repair—TB/ALL.
35.90–80 Servicing of inflatable liferafts, inflatable lifejackets and inflated rescue boats—TB/ALL.
35.90–90 Periodic servicing of hydrostatic release units—TB/ALL.

11. The authority citation for Part 35 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

12. By adding Subpart 35.00 to read as follows:

Subpart 35.00—Incorporation by Reference

§ 35.00–1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103

ASTM D93–80, Test for Flash Point by Pennsky-Martens Closed Tester—35.25–10.

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England.

Resolution [LSR 19/WP.4, Annex 3], "Guidelines Concerning the Use and Fitting of Retroreflective Materials on Life-saving Appliances", June 1987—35.40–40; 35.40–50.

National Fire Protection Association

Batterymarch Park, Quincy, MA 02269.

NFPA 306, Control of Gas Hazards on Vessels, 1975—35.01–1.

Subpart 35.07—Logbook Entries

13. By revising paragraphs (b)(1), (b)(2), and (b)(6) of § 35.07–10 to read as follows:

§ 35.07–10 Actions required to be logged—TB/ALL.

* * * * *

(b) * * *

(1) Abandon-ship training and drills, and fire drills. As held. See §§ 35.10–1 and 35.10–2.

(2) Survival craft winches. Once in each three months. See § 35.90–73.

* * * * *

(6) Line-throwing appliances. Once in each three months. See § 35.10–3.

* * * * *

Subpart 35.10—Fire and Emergency Requirements

14. By revising § 35.10–1 to read as follows:

§ 35.10–1 Abandon-ship training and drills—T/ALL.

(a) Abandon-ship training material must be on board each vessel. The training material must consist either of a manual of one or more volumes, or audio-visual training aids, or both.

(1) The training material must contain instructions and information on the lifesaving appliances on the vessel and on the best methods of survival. A training manual must be written in easily understood terms, illustrated wherever possible.

(2) If a training manual is used, a copy must be in each crew messroom and recreation room or in each crew cabin. If audio-visual training aids are used they must be incorporated in the onboard training sessions under paragraph (d) of this section.

(3) The training material must explain the following in detail:

(i) Donning of the lifejackets and immersion suits carried on board.

(ii) Muster at the assigned stations.

(iii) Boarding, launching, and clearing the survival craft and rescue boats.

(iv) Method of launching from within the survival craft.

(v) Release from launching appliances.

(vi) Method and use of devices for protection in launching areas, where appropriate.

(vii) Illumination in launching areas.

(viii) Use of all survival equipment.

(ix) Use of all detection equipment.

(x) With illustrations, the use of radio lifesaving appliances.

(xi) Use of sea anchors.

(xii) Use of engine and accessories.

(xiii) Recovery of survival craft and rescue boats including stowage and securing.

(xiv) Hazards of exposure and the need for warm clothing.

(xv) Best use of the survival craft for survival.

(xvi) Methods of retrieval, including the use of helicopter rescue gear (slings, baskets, stretchers), breeches-buoy and shore lifesaving apparatus and vessel's line-throwing apparatus.

(xvii) All other functions contained in the muster list and emergency instructions.

(xviii) Instructions for emergency repair of the lifesaving appliances.

(b) An abandon-ship drill must be conducted on each vessel in alternating weeks. If a drill cannot be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(1) Any member of the crew excused from an abandon-ship drill must participate in the next drill, so that each member participates in at least one abandon-ship drill each month. If more than 25% of the crew have not participated in an abandon-ship drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G–MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(2) On a vessel on an international voyage, musters of the passengers must take place within 24 hours after their embarkation. Passengers must be instructed in the use of the lifejackets and the action to take in an emergency. The passengers must be encouraged to participate fully in the abandon-ship drill. If only a small number of passengers embark at a port after the original muster has been held, the attention of these passengers must be drawn to the emergency instructions required under § 199.80(a) and 199.80(c) of this chapter if another muster is not held.

(3) On each vessel not on an international voyage, a muster of the passengers must be held on departure, or else—

(i) For voyages of more than one day's duration, musters of the passengers must be in accordance with paragraph (b)(2) of this section as for vessels on an international voyage; and

(ii) For voyages of less than one day's duration, the attention of the passengers must be drawn to the emergency instructions required under § 199.80(a) and 199.80(c) of this chapter.

(4) Each abandon-ship drill must include:

(i) Summoning of passengers and crew to muster stations with the general alarm and making sure that they are made aware of how the order to abandon ship is given, as specified in the station bill.

(ii) Simulation of an abandon-ship emergency which varies from drill to drill.

(iii) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular abandon-ship emergency being simulated.

(iv) Checking to see that passengers and crew are suitably dressed.

(v) Checking to see that lifejackets are correctly donned.

(vi) Lowering of at least one lifeboat after any necessary preparation for launching. The lifeboat must be lowered at least to the extent where the davit head has completed its travel and the fall wire has begun to pay out.

(vii) Starting and operating the lifeboat engine.

(viii) Operation of davits used for launching liferafts.

(5) Different lifeboats must, as far as practicable, be lowered to meet paragraph (b)(3)(v) of this section at successive drills.

(6) Each abandon-ship drill must, as far as practicable, be conducted as if there were an actual emergency.

(7) Each lifeboat must be launched with its assigned operating crew aboard and maneuvered in the water at least once every 3 months during an abandon-ship drill.

(8) Each rescue boat that is not also a lifeboat must be launched with its assigned crew aboard and maneuvered in the water—

(i) Once each month, if reasonable and practicable; but

(ii) At least once every 3 months.

(9) If lifeboat and rescue boat launching drills are carried out with the

vessel making headway, such drills must, because of the dangers involved, be practiced only in waters where it is safe, under the supervision of an officer experienced in such drills.

(10) At least one drill every 3 months must be held at night, unless the master determines it is unsafe.

(11) Emergency lighting for mustering and abandonment must be tested at each abandon-ship drill.

(c) The master of a vessel carrying immersion suits shall make sure that—

(1) Each crew member either—

(i) Wears an immersion suit in at least one abandon-ship drill per month unless is is impracticable due to warm weather; or

(ii) Participates in at least one immersion suit drill per month that includes donning an immersion suit and being instructed in its use;

(2) In each abandon-ship drill, each passenger on board is instructed in the use of immersion suits; and

(3) Each passenger is told at the beginning of the voyage where immersion suits are stowed on board and is encouraged to read the instructions for donning and use of the immersion suits.

(d) Each crew member on board the vessel must be given training in the use of lifesaving appliances and the duties assigned in the station bill.

(1) Except as provided under paragraph (d)(2) of this section, onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, must be given to each crew member as soon as possible, but not later than 2 weeks after the crew member joins the vessel.

(2) If a crew member is on a regularly scheduled rotating assignment to a vessel, onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, must be given to the crew member not later than 2 weeks after the time the crew member first joins the vessel.

(3) The crew must be instructed in the use of the vessel's lifesaving appliances and in survival at sea on alternating weeks, normally in the weeks when abandon-ship drills are not held. If individual instruction sessions cover different parts of the vessel's lifesaving system, all the vessel's lifesaving equipment and appliances must be covered within each 2 month period. Each member of the crew must be instructed in at least—

(i) Operation and use of the vessel's inflatable liferafts;

(ii) Problems of hypothermia, first-aid treatment for hypothermia and other appropriate first-aid procedures; and

(iii) Special instructions necessary for use of the vessel's lifesaving appliances in severe weather and severe sea conditions.

(4) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on each vessel with davit-launched liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special liferaft intended for training purposes only, and is not part of the vessel's lifesaving equipment, this liferaft must be conspicuously marked.

(e) The date when musters are held, details of abandon-ship drills, drills of other lifesaving appliances and onboard training must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill or training session.

(3) Identification of survival craft used in drills.

(4) Subject of training session.

(5) Statement as to the condition of the equipment used.

(6) If a full muster, drill or training session is not held at the appointed time, the circumstances and the extent of the muster, drill or training session held.

15. By adding a new § 35.10–2 to read as follows:

§ 35.10–2 Fire drills.

(a) A fire drill must be conducted on each vessel in alternating weeks. The fire drill must not be conducted as part of the abandon-ship drill, nor immediately prior to or after the abandon-ship drill. If a fire drill can not be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(b) Any member of the crew excused from a fire drill must participate in the next drill, so that each member participates in at least one fire drill each month. If more than 25% of the crew have not participated in a fire drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G–MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(c) Each fire drill must include:

(1) Summoning of passengers and crew to their stations with the general alarm.

(2) Simulation of a fire emergency which varies from drill to drill.

(3) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is in proper working order.

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency equipment lockers, and demonstrating the use of each item by the person or persons designated to use it.

(6) Operating each watertight door used while the vessel is underway.

(7) Operation of each self-closing fire door.

(8) Closing all fire doors and doors in fire boundaries.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The date when fire drills are held, and details of fire drills must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill.

(3) Number and lengths of hose used.

(4) Statement as to the condition of the equipment used.

(5) If a full drill is not held at the appointed time, the circumstances and the extent of the drill held.

16. By redesignating § 35.10–3 as § 35.10–4 and adding a new § 35.10–3 to read as follows:

§ 35.10–3 Line throwing appliance drills—T/ALL.

(a) The master of a vessel carrying a line-throwing appliance shall make sure that the crew is drilled in its use at least once every three months. The actual firing of the appliance is at the discretion of the master.

(b) Each line-throwing appliance drill must be recorded in the vessel's logbook.

17. By revising § 35.10–5 to read as follows:

§ 35.10–5 Emergency signals—T/ALL.

(a) The various signals used to call the crew to their stations and to give instructions to the crew must be listed on the station bill required under § 199.80(b) of this chapter. The signals must be as follows:

(1) The fire and emergency signal must consist of a continuous blast of the whistle for not less than 10 seconds followed by the continuous ringing of

the general alarm bells for not less than 10 seconds.

(2) The signal for dismissal from fire alarm stations must consist of ringing of the general alarm bells three times, followed by three short blasts of the whistle.

(3) The signal for boat stations or boat drill must consist of a succession of more than six short blasts, followed by one long blast of the whistle, followed by the same signal on the general alarm bells.

(4) A man-overboard signal must be established.

(5) An abandon-ship signal must be established.

(6) The signal to lower lifeboats or davit launched liferafts must consist of one short blast of the whistle.

(7) The signal to stop lowering lifeboats or davit launched liferafts must consist of two short blasts of the whistle.

(8) The signal for dismissal from boat stations must consist of three short blasts of the whistle.

(9) Each other emergency signal must not conflict with navigational signals or other general alarm signals.

(b) For vessels in river service where a whistle is not used, the ship's bell must be used for the whistle signals described under paragraph (a) of this section.

§ 35.10-6 [Removed]

18. By removing § 35.10-6.

§ 35.10-7 [Removed]

19. By removing § 35.10-7.

§ 35.10-9 [Removed]

20. By removing § 35.10-9.

§ 35.10-20 [Removed]

21. By removing § 35.10-20.

§ 35.10-25 [Removed]

22. By removing § 35.10-25.

§ 35.10-30 [Removed]

23. By removing § 35.10-30.

24. By adding Subpart 35.11 to read as follows:

Subpart 35.11—Manning of Survival Craft and Supervision

§ 35.11-1 Certificate of proficiency—TB/ALL.

A merchant mariner's document endorsement as a lifeboatman or another inclusive rating under Part 12 of this Title is evidence of training in survival craft and serves as a certificate of proficiency. For the purposes of this subpart, a "certificated person" is a person holding a merchant mariner's document with such an endorsement.

§ 35.11-5 Manning and supervision—TB/ALL.

(a) There must be a sufficient number of trained persons on board for mustering and assisting untrained persons.

(b) There must be a sufficient number of deck officers, able seamen, or certificated persons on board to operate the survival craft and launching arrangements required for abandonment by the total number of persons permitted on board.

(c) One person must be placed in charge of each survival craft to be used.

(1) Except for vessels in river service, the person in command must be a deck officer, able seaman, or certificated person.

(2) A deck officer, able seaman, or certificated person must be designated second-in-command for—

(i) Each lifeboat on a vessel in ocean service; and

(ii) Except on a vessel in river service, each lifeboat permitted to carry more than 40 persons.

(3) Each vessel that carries passengers and is not in river service, must have at least one deck officer, able seaman, or certificated person for every 20 passengers assigned to each lifeboat.

(d) The person in charge of each survival craft shall have a list of the survival craft crew and shall see that the crewmembers are acquainted with their duties. The second-in-command of a lifeboat shall also have a list of the lifeboat crew.

(e) Each motorized survival craft must have a person assigned who is capable of operating the engine and carrying out minor adjustments.

(f) The master shall make sure the persons required under paragraphs (a), (b), and (c) of this section are equitably distributed among the vessel's survival craft.

Subpart 35.40—Marking of Fire and Emergency Equipment.

25. By adding a new § 35.40-19 to read as follows:

§ 35.40-19 Fire hoses and fire axes—TB/ALL.

Fire hoses and fire axes must be marked with the vessel's name.

26. By revising § 35.40-40 to read as follows:

§ 35.40-40 Lifeboats and rescue boats—TB/ALL.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the boat. The boats on each side of the vessel must be numbered from forward to aft. If there are boats on both sides of the vessel, the odd numbers must be on the starboard side.

(3) For vessels in ocean service, the name of the port is required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 35 mm (1.5 in.) high:

(1) The length and beam of the boat.

(2) The number of persons capacity of the boat. This number must—

(i) Be the number of persons the lifeboat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat in at least two places visible from above the boat in letters and numbers not less than 75 mm (3 in.) high:

(1) The number of persons capacity of the boat.

(2) The name of the vessel.

(d) The name of the vessel must be plainly marked or painted on each oar and paddle.

(e) On or before July 1, 1991, each lifeboat and rescue boat must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

27. By adding a new § 35.40-43 to read as follows:

§ 35.40-43 Rigid liferafts—TB/ALL.

(a) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the liferaft. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 35 mm (1.5 in.) high:

(1) Either "SOLAS A Pack" or "SOLAS B Pack" depending upon its equipment under § 199.143(b) or § 199.143(c) of this chapter.

(2) The length of the painter.

(c) The number of persons capacity must be plainly marked or painted over each entrance to each rigid liferaft in letters and numbers at least 100 mm (4 in.) high, in a color contrasting to that of the liferaft. This number must—

(1) Be the number of persons the liferaft is equipped for; and

(2) Not be greater than the number of persons the liferaft is approved for, as shown on its nameplate.

(d) The name of the vessel must be plainly marked or painted on each paddle.

28. By adding a new § 35.40–45 to read as follows:

§ 35.40–45 Inflatable liferafts—TB/ALL.

The number of the liferaft and the number of persons it is permitted to accommodate must be marked or painted in a conspicuous place in the immediate vicinity of each inflatable liferaft in letters and numbers at least 35 mm (1.5 in.) high. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats. This marking must not be on the inflatable liferaft container.

29. By adding a new § 35.40–48 to read as follows:

§ 35.40–48 Life floats and buoyant apparatus—TB/ALL.

(a) The name of the vessel must be plainly marked or painted on each life float and buoyant apparatus, together with their oars and paddles.

(b) The number of persons capacity must be plainly marked or painted on each life float and buoyant apparatus in letters and numbers at least 35 mm (1.5 in.) high. This number must—

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for, as shown on its nameplate.

30. By adding a new § 35.40–50 to read as follows:

§ 35.40–50 Lifejackets, immersion suits, and ring life buoys—TB/ALL.

(a) Each lifejacket, immersion suit, and ring life buoy must be marked in block capital letters with the vessel's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 50 mm (2 in.) high with the number and identification of the items stowed inside and their size.

(c) Each ring life buoy on a vessel in ocean service must be marked in block capital letters with the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(d) Each stowage position for a ring life buoy must be marked "LIFE BUOY".

(e) Each lifejacket must be marked with Type I retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

(f) On or before July 1, 1991, each ring life buoy must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

Note.—Each approved immersion suit is provided with retroreflective material by the manufacturer of the suit.

31. By adding a new § 35.40–55 to read as follows:

§ 35.40–55 EPIRBs and SARTs—TB/ALL.

The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except for an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

32. By adding a new Subpart 35.90 to read as follows:

Subpart 35.90—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

§ 35.90–20 Operational readiness—TB/ALL.

(a) Except as provided in § 35.90–30(e), each lifesaving appliance and each item of survival craft, rescue boat, life float, and buoyant apparatus equipment must be in good working order and ready for immediate use before the vessel leaves port and at all times when the vessel is in navigation.

(b) Each deck where lifeboats, liferafts, life floats, and buoyant apparatus are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the lifesaving appliances.

(c) If lifeboats are used to carry persons to and from the vessel when the vessel is in a harbor or at an anchorage, a sufficient number of lifeboats and liferafts must be available for use on each side of the vessel to accommodate all persons remaining on board.

§ 35.90–30 Maintenance—TB/ALL.

(a) The manufacturer's instructions for onboard maintenance of lifesaving appliances must be onboard and must include the following for each appliance—

(1) Checklists for use when carrying out the inspections required under § 35.90–70(a);

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The master shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) For lifesaving appliances constructed on or before July 1, 1986, paragraph (a) of this section need only be complied with to the extent that the manufacturer's instructions are available.

(d) The OCMI may accept, instead of the instructions required under paragraph (a) of this section, a shipboard planned maintenance program that includes the items listed in that paragraph.

(e) If lifeboats, rescue boats, and rigid liferafts are maintained and repaired while the vessel is underway, a sufficient number of lifeboats and liferafts must be available for use on each side of the vessel to accommodate all persons on board.

(f) Except in an emergency, extensive repairs or alterations must not be made to any lifesaving appliance without advance notification of the OCMI. Insofar as possible, each repair or alteration must be made in accordance with the requirements for the lifesaving appliance in Subchapter Q of this chapter. The OCMI may require each lifesaving appliance that has been altered or extensively repaired to be subjected to each test for the appliance in Subchapter Q of this chapter that is affected by the repair or alteration.

(g) The master shall report each emergency repair or alteration to a lifesaving appliance as soon as practicable to the OCMI in the next port in the United States where the vessel calls. If the vessel does not regularly call at ports in the the United States, the report must be made to the OCMI responsible for one of the foreign ports where the vessel calls.

(h) A lifeboat or rigid liferaft must not be repaired or reconditioned for use on a vessel other than the one it was originally built for, unless specifically permitted by the OCMI. If required by the OCMI, the repair or reconditioning

of the lifeboat or rigid liferaft must be made under the OCMI's supervision.

§ 35.90-40 Maintenance of falls—TB/ALL.

(a) Each fall used in a launching appliance must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is the earlier.

(c) Each fall must have a corrosion-resistant tag with the following permanently marked on it:

(1) The date the new fall was installed.

(2) If the fall has been turned end for end, the date it was turned.

§ 35.90-50 Spare parts and repair equipment—TB/ALL.

Spare parts and repair equipment must be provided for each lifesaving appliance and component subject to excessive wear or consumption and that needs to be replaced regularly. These parts and equipment must be kept on board the vessel, or, if the vessel operates daily out of the same shore base, these parts and equipment may be kept at the shore base.

§ 35.90-60 Weekly maintenance and inspection—TB/ALL.

The following tests and inspections must be carried out weekly:

(a) Each survival craft, rescue boat and launching appliance must be visually inspected to ensure its readiness for use.

(b) Each lifeboat engine and rescue boat engine must be run ahead and astern for not less than 3 min., unless the ambient temperature is below the minimum temperature required for starting the engine.

(c) The general alarm system must be tested.

(d) Each battery for lifeboat and rescue boat engine starting, searchlights, fixed lifeboat radio installations, and portable radio apparatus must be brought up to full charge at least once each week if—

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

(e) The transmitter of each fixed lifeboat radio installation and portable radio apparatus must be tested at least once each week using a dummy antenna load.

§ 35.90-70 Monthly inspections—TB/ALL.

(a) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly using the checklist required under § 35.90-30(a)(1) to make sure it is complete and in good order. A report of the inspection, including a statement as to the condition of the equipment, must be recorded in the vessel's official logbook.

(b) Each EPIRB and each SART, other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and output indicator to determine that it is operative.

§ 35.90-73 Quarterly inspections—TB/ALL.

(a) Each lifeboat winch control apparatus, including motor controllers, emergency switches, master switches, and limit switches must be examined once each three months.

(b) The examination must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

(c) The date of the examination required under this section and the condition of the equipment must be noted in the official logbook.

§ 35.90-75 Annual inspection and repair—TB/ALL.

(a) Each lifeboat, rescue boat, rigid liferaft, buoyant apparatus and life float must be stripped, cleaned, and thoroughly inspected and repaired as needed at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired as needed once each year.

(c) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of survival equipment and clearly marked with a date identified as an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(e) Except for a storage battery used in a lifeboat or rescue boat, each battery without an expiration date used in an item of survival equipment must be replaced during the annual inspection and repair.

(f) The requirements in this section do not relieve the master or person in charge of the requirement under § 35.90-20(a) to keep the equipment ready for immediate use.

§ 35.90-80 Servicing of inflatable liferafts, inflatable lifejackets and inflated rescue boats—TB/ALL.

(a) Each inflatable liferaft, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced—

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided the delay does not exceed 5 months.

(b) Each inflatable liferaft must be serviced—

(1) Whenever the container of the raft is damaged, or the straps or seal broken; and

(2) In accordance with the servicing procedure under Subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under Subpart 160.076 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under Subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant (G-MVI), except for emergency repairs carried out on board the vessel.

§ 35.90-90 Periodic servicing of hydrostatic release units—TB/ALL.

(a) Each hydrostatic release unit must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under Subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic release unit must be renewed when the unit is serviced and tested.

SUBCHAPTER H—PASSENGER VESSELS

PART 70—GENERAL PROVISIONS

33. The authority citation for Part 70 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

34. By revising § 70.10-43 to read as follows:

§ 70.10-43 Short international voyage.

A short international voyage is an international voyage in the course of which a vessel is not more than 200 miles from a port or place in which the passengers and crew could be placed in

safety. Neither the distance between the last port of call in the country in which the voyage begins and the final port of destination nor the return voyage must exceed 600 miles. The final port of destination is the last port of call in the scheduled voyage at which the vessel begins its return voyage to the country in which the voyage began.

35. By adding a new Subpart 70.28 to read as follows:

Subpart 70.28—Lifesaving Appliances and Arrangements.

§ 70.28-1 General.

Lifesaving appliances and arrangements on passenger vessels must meet Subchapter W of this chapter.

PART 71—INSPECTION AND CERTIFICATION

36. The authority citation for Part 71 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

Subpart 71.20—Initial Inspection

37. By revising paragraph (a)(1) of § 71.20-20 to read as follows:

§ 71.20-20 Specific tests and inspections.

(a) * * *

(1) The following tests and inspections and the tests and inspections in § 71.25-15(a)(5) through § 71.25-15(a)(9) must be conducted for each initial inspection for certification. The tests and inspections under paragraph (a)(1)(i) of this section must also be conducted when each new davit, winch, or other launching appliance is installed on the vessel. The test under paragraph (a)(1)(ii) of this section must also be conducted when each new lifeboat or rescue boat is installed on the vessel. The inspection under paragraph (a)(1)(v) of this section must also be conducted when each new lifeboat, rescue boat, liferaft, davit, winch, or other launching appliance is installed on the vessel. The test under paragraph (a)(1)(vi) of this section must also be conducted when each new life buoy quick release device is installed on the vessel.

(i) Each launching appliance using falls and a winch for a rescue boat, davit-launched liferaft, or lifeboat must be tested as follows:

(A) The lifeboat, rescue boat or davit-launched liferaft must be loaded with all of its equipment or the deadweight equivalent. In addition, the davit-launched liferaft must be loaded with a 75 kg (165 lb.) weight to simulate the load of one person. A davit-launched liferaft is not required for this test if an appropriate test weight is used. The boat or liferaft must be lowered from the embarkation station and launched into the water using the normal launching procedure. If a test weight is substituted for the davit-launched liferaft, the weight must be "launched" onto a surface that will support its weight. The rescue boat must then be loaded with the deadweight equivalent of its full rescue boat complement using a weight of 75 kg (165 lb.) per person. In the case of a lifeboat or rescue boat launching appliance, the boat must then be recovered by the launching appliance. In the case of a liferaft launching appliance, the hand-operated quick-return mechanism must be used to recover the fall.

(*1*) There must be no deformation of or damage to the launching appliance or its connections to the vessel.

(*2*) The lowering speed must meet § 199.153(j) of this chapter, and the falls must meet § 199.153(g) of this chapter. For a multiple drum winch, the falls must wind off the drums at the same rate when lowering, and wind onto the drums evenly in a level wrap at the same rate when hoisting.

(*3*) The release mechanism control in a boat must open all hooks simultaneously and release the boat into the water.

(*4*) The automatic disengaging apparatus for a davit-launched liferaft must open and release the liferaft or test weight after the apparatus is set to open automatically and the liferaft or test weight is set on the surface.

(*5*) The recovery of the boat must meet § 199.153(1) of this chapter, and if the boat is a rescue boat, § 199.160(d) of this chapter.

(*6*) For each launching device equipped to recover a boat by power, including a launching device with a portable power source, the limit switches or other safety devices must automatically cut off the power before the boat reaches the stops to avoid overstressing the falls and davits.

(*7*) The hand-operated recovery gear for a lifeboat or rescue boat launching appliance must be capable of moving the boat into its stowed position where the boat can be safely and properly secured.

(*8*) The operation of the hand-operated quick-return mechanism on a davit-launched liferaft launching appliance must be smooth, rapid, and easy enough for one person to recover the fall.

(B) If the lowering of a lifeboat or rescue boat is controlled from within the boat by a control wire wound on an auxiliary drum on the winch, the launching of the boat must be tested with the boat loaded as under paragraph (a)(1)(i)(A) of this section, but with an operator inside.

(*1*) The mass of the control wire must be sufficient to overcome the friction of the sheaves used on the control wire when the launching appliance is being operated by the on-deck controls.

(*2*) The control wire must properly operate the winch brake.

(*3*) The winch brake must not be affected by the mass of the fully extended control wire.

(*4*) There must be sufficient length of control wire available inside the boat to operate the winch brake during all stages of lowering.

(*5*) The free end of the control wire must be retained within the boat until the the boat is released from the falls by the operator.

(C) The test procedure under paragraph (a)(1)(i)(A) of this section must be repeated with the lifeboat, rescue boat or liferaft loaded with weight equivalent to all of its equipment and full complement of persons, plus 10% of the total weight of the loaded boat or liferaft. In the case of a davit-launched liferaft, the automatic disengaging apparatus must be set to release. The on-deck launching controls must be used for this test, with the boat or liferaft being stopped after it has reached its maximum lowering speed, and then at approximately 2 m (6 ft.) intervals. In the case of a lifeboat or rescue boat, when the boat reaches a position just above the water, it must be released from the falls using the on-load release mechanism control.

(*1*) There must be no deformation of or damage to the launching appliance or its connections to the vessel.

(*2*) The lowering speed must meet §§ 199.153(i) and 199.153(k) of this chapter, and the falls must meet § 199.153(g) of this chapter.

(*3*) The launching appliance must bring the boat or raft to a stop within 1 m (39 in.) by application of the brake by the winch counterweight alone.

(*4*) The brake action must be smooth and positive.

(*5*) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(*6*) The boat or raft must begin to lower each time the brake is released. No additional force is permitted.

(*7*) The release mechanism control in a boat must open all hooks simultaneously and release the boat into the water.

(*8*) The automatic disengaging apparatus for a davit-launched liferaft must not release the liferaft or test

weight until the liferaft or test weight is set on the surface.

(D) The release apparatus for a davit launched liferaft must be tested to determine that it will release under a towing strain. The liferaft or test weight loaded as required under paragraph (a)(1)(i)(C) of this section must be suspended just above the surface and the release apparatus set to open automatically. A horizontal towing strain sufficient to pull the falls 5° from vertical must be applied to the liferaft or test weight and the liferaft lowered. The release apparatus must release the liferaft or test weight as it is set on the surface.

(E) If any winch brake surface is exposed to the weather, the test under paragraph (a)(1)(i)(C) of this section must be conducted with the brake surfaces dry and repeated with the brake surfaces wet. The brake must stop the winch when the brake surface is wet, but the stopping distance requirement does not apply.

(ii) Each lifeboat and rescue boat must be operated in the water for at least 2 hrs. During this time, the propulsion system must be operated both forward and astern. At least 1 hr. of this running time must be with the propulsion system operating at full speed. Each boat system, such as any powered bilge pump, water spray system, or air supply system, must be operated.

(A) The boat and each of its systems must operate properly without overheating or being damaged.

(B) The boat must not have any evident leakage through the hull or around any through-hull fitting.

(iii) An abandon-ship simulation must be held to determine that all survival craft required for abandonment by the total number of persons permitted on board, can be launched with their full complement of persons and equipment within 30 min. from the time the abandon-ship signal is given.

(A) This simulation must include loading and launching of sufficient survival craft to demonstrate that the requirement can be met.

(B) This test is not required if the Coast Guard has witnessed a successful test on a sister vessel with the same lifesaving appliance arrangements.

(iv) One lifeboat and one rescue boat of each type on board must be launched with the vessel proceeding at a speed of approximately 5 knots. No particular loading of the boat is required. The boat must not give any indication that it is unstable or out of control during the launching procedure.

(v) The installation of each lifeboat, rescue boat, liferaft and launching appliance must be inspected to determine that it meets each condition of its approval, as listed on its Certificate of Approval (Form CGHQ 10030).

(vi) The quick release device for ring life buoys required for certain vessels under § 199.70(c) of this chapter, must be tested to demonstrate that the ring life buoy and its attachments drop clear of the side of the vessel when released. A self-activating smoke signal is not required for this test if a dummy device of comparable size and weight is used.

* * * * *

Subpart 71.25—Annual Inspection

38. By revising § 71.25–15 to read as follows:

§ 71.25–15 Lifesaving equipment.

(a) At each inspection for certification, the following inspections and tests must be conducted in the presence of a marine inspector, or as otherwise directed by the OCMI:

(1) Each air tank provided for buoyancy on a lifeboat, liferaft, buoyant apparatus or life float, must be tested and demonstrated to be airtight.

(2) Each lifeboat and rescue boat gravity davit, and each davit-launched liferaft launching device must be used to lower the boat or liferaft from its stowed position to a point near the water using the on-deck launching appliance controls. This test must be conducted twice; once with the boat or liferaft loaded with all equipment and additional weight of not more than one person, and a second time with the weight of a full load of persons and equipment. A davit-launched liferaft is not required for this test if an appropriate test weight is used. During the lowering, the brake must be applied and released at least five times.

(i) The launching appliance must bring the boat, liferaft, or test weight to a stop by application of the brake by the winch counterweight alone.

(ii) The brake action must be smooth and positive.

(iii) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(iv) Lowering must begin each time the brake is released. No additional force is permitted.

(3) Each lifeboat and rescue boat must be lowered to a point just above the water and evenly loaded until the total weight of the boat equals the "B" weight on the boat data plate. If the boat is equipped with mechanical disengaging apparatus, the release mechanism control must be operated and must open all hooks simultaneously and release the boat into the water properly. There must be no evident damage or deformation of the boat, the launching appliance, or its connections to the vessel.

(4) Each davit-launched liferaft launching appliance must be loaded with a weight equal to the liferaft loaded with its full load of persons and equipment. The weight must be lowered to a point just above the water, dock or other surface that will support the weight. The automatic disengaging apparatus control must be set to release, and must open when the weight is lowered to and supported by the surface. There must be no evident damage or deformation of the automatic disengaging apparatus, launching appliance, or its connections to the vessel.

(5) Each lifejacket, immersion suit, and work vest must be examined to determine that it is in serviceable condition. Each lifejacket, immersion suit, and work vest not in serviceable condition must be either repaired, or destroyed and removed from the vessel. The marine inspector may mark the lifejackets, immersion suits, and work vests to indicate that they have been inspected and passed.

(6) The control apparatus for each electrically-controlled launching appliance winch must be opened, inspected, and determined to be in serviceable condition.

(7) Each inflatable liferaft and inflatable lifejacket must be inspected to determine that it has been serviced under § 78.95–80 of this chapter.

(8) Each hydrostatic release unit must be inspected to determine that it has been serviced under § 78.95–90 of this chapter.

(9) Each other item of lifesaving equipment on the vessel must be inspected to determine that it is in serviceable condition. Each item not in serviceable condition must be repaired or replaced. Each item of survival equipment with an expiration date on it must be replaced if the expiration date has passed.

(10) An abandon-ship drill must be held. The marine inspector specifies the nature of the emergency to be simulated.

PART 75—LIFESAVING EQUIPMENT

39. By removing and reserving Part 75.

39a. The following Table of Contents for Part 78 reflects new or revised subparts to read as follows:

PART 78—OPERATIONS

Subpart 78.00—Incorporation by Reference

Sec.
78.00–1 Incorporation by reference.
* * * * *

Subpart 78.13—Emergency Signals

78.13–1 Emergency signals.

Subpart 78.14—Manning of Survival Craft and Supervision

78.14–1 Certificate of proficiency.
78.14.5 Manning and supervision.
* * * * *

Subpart 78.95—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

78.95–20 Operational readiness.
78.95–30 Maintenance.
78.95–40 Maintenance of falls.
78.95–50 Spare parts and repair equipment.
78.95–60 Weekly maintenance and inspection.
78.95–70 Monthly inspections.
78.95–73 Quarterly inspections.
78.95–75 Annual inspection and repair.
78.95–80 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable lifejackets and inflated rescue boats.
78.95–90 Periodic servicing of hydrostatic release units.

40. The authority citation for Part 78 is revised to read as follows:

Authority: 46 U.S.C. 3306, 6101; 49 CFR 1.46.

41. By adding Subpart 78.00 to read as follows:

Subpart 78.00—Incorporation by Reference

§ 78.00–1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103
ASTM D93–80, Test for Flash Point by Pennsky-Martens Closed Tester: 78.17–75.

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England
Resolution [LSR 19/WP.4, Annex 3], "Guidelines Concerning the Use and Fitting of Retroreflective Materials on Life-saving Appliances", June 1987: 78.47–60; 78.47–65.

42. By revising Subpart 78.13 to read as follows:

Subpart 78.13—Emergency Signals

§ 78.13–1 Emergency signals.

(a) *General.* The various signals used to call the crew to their stations and to give instructions to the crew must be listed on the station bill required under § 199.80 of this chapter. The signals must be as follows:

(1) The fire and emergency signal must consist of a continuous blast of the whistle for not less than 10 seconds followed by the continuous ringing of the general alarm bells for not less than 10 seconds.

(2) The signal for dismissal from fire alarm stations must consist of ringing of the general alarm bells three times, followed by three short blasts of the whistle.

(3) The signal for boat stations or boat drill must consist of a succession of more than six short blasts, followed by one long blast of the whistle, followed by the same signal on the general alarm bells.

(4) A man-overboard signal must be established.

(5) An abandon-ship signal must be established.

(6) The signal to lower lifeboats or davit launched liferafts must consist of one short blast of the whistle.

(7) The signal to stop lowering lifeboats or davit launched liferafts must consist of two short blasts of the whistle.

(8) The signal for dismissal from boat stations must consist of three short blasts of the whistle.

(9) Each other emergency signal established must not conflict with navigational signals or other general alarm signals.

(b) *River service.* For vessels in river service where a whistle is not used, the ship's bell must be used for the whistle signals described in this section.

43. By revising Subpart 78.14 to read as follows:

Subpart 78.14—Manning of Survival Craft and Supervision

§ 78.14–1 Certificate of proficiency.

A merchant mariner's document endorsement as a lifeboatman or another inclusive rating under Part 12 of this Title is evidence of training in survival craft and serves as a certificate of proficiency. For the purposes of this subpart, a "certificated person" is a person holding a merchant mariner's document with such an endorsement.

§ 78.14–5 Manning and supervision.

(a) There must be a sufficient number of trained persons on board for mustering and assisting untrained persons.

(b) There must be a sufficient number of deck officers, able seamen, or certificated persons on board to operate the survival craft and launching arrangements required for abandonment by the total number of persons permitted on board.

(c) One person must be placed in charge of each survival craft to be used.

(1) Except for vessels in river service, the person in command must be a deck officer, able seaman, or certificated person.

(2) The OCMI, considering the nature of the voyage, the number of persons permitted on board and the characteristics of the vessel, may permit persons practiced in the handling and operation of liferafts to be placed in charge of liferafts instead of persons required under paragraph (c)(1) of this section.

(3) A deck officer, able seaman, or certificated person must be designated second-in-command for—

(i) Each lifeboat on a vessel in ocean service; and

(ii) Except on a vessel in river service, each lifeboat permitted to carry more than 40 persons.

(4) Each vessel that is not in river service, must have a least one deck officer, able seaman, or certificated person for every 20 passengers assigned to each lifeboat.

(d) The person in charge of each survival craft shall have a list of the survival craft crew and shall see that the crewmembers are acquainted with their duties. The second-in-command of a lifeboat shall also have a list of the lifeboat crew.

(e) Each lifeboat required to carry a radiotelegraph installation under § 199.250 of this chapter must have a person assigned who is capable of operating the equipment.

(f) Each motorized survival craft must have a person assigned who is capable of operating the engine and carrying out minor adjustments.

(g) The master shall make sure the persons required under paragraphs (a), (b), and (c) of this section are equitably distributed among the vessel's survival craft.

Subpart 78.17—Tests, Drills, and Inspections

§ 78.17-40 [Amended]

44. By removing paragraph (a)(3) of § 78.17-40.

45. By revising § 78.17-50 to read as follows:

§ 78.17-50 Abandon-ship training and drills.

(a) Abandon-ship training material must be on board each vessel. The training material must consist either of a manual of one or more volumes, or audio-visual training aids, or both.

(1) The training material must contain instructions and information on the lifesaving appliances on the vessel and on the best methods of survival. A training manual must be written in easily understood terms, illustrated wherever possible.

(2) If a training manual is used, a copy must be in each crew messroom and recreation room or in each crew cabin. If audio-visual training aids are used they must be incorporated in the onboard training sessions under paragraph (d) of this section.

(3) The training material must explain the following in detail:

(i) Donning of the lifejackets and immersion suits carried on board.

(ii) Muster at the assigned stations.

(iii) Boarding, launching, and clearing the survival craft and rescue boats.

(iv) Method of launching from within the survival craft.

(v) Release from launching appliances.

(vi) Method and use of devices for protection in launching areas, where appropriate.

(vii) Illumination in launching areas.

(viii) Use of all survival equipment.

(ix) Use of all detection equipment.

(x) With illustrations, the use of radio lifesaving appliances.

(xi) Use of sea anchors.

(xii) Use of engine and accessories.

(xiii) Recovery of survival craft and rescue boats including stowage and securing.

(xiv) Hazards of exposure and the need for warm clothing.

(xv) Best use of the survival craft for survival.

(xvi) Methods of retrieval, including the use of helicopter rescue gear (slings, baskets, stretchers), breeches-buoy and shore lifesaving apparatus and vessel's line-throwing apparatus.

(xvii) All other functions contained in the muster list and emergency instructions.

(xviii) Instructions for emergency repair of the lifesaving appliances.

(b) An abandon-ship drill must be conducted on each vessel at least once each week. If a drill cannot be held during any week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(1) Any member of the crew excused from an abandon-ship drill must participate in a later drill, so that each member participates in at least one abandon-ship drill each month. If more than 25% of the crew have not participated in an abandon-ship drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G-MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(2) On a vessel on an international voyage that is not a short international voyage, musters of the passengers must take place within 24 hours after their embarkation. Passengers must be instructed in the use of the lifejackets and the action to take in an emergency. The passengers must be encouraged to participate fully in the abandon-ship drill. If only a small number of passengers embark at a port after the original muster has been held, the attention of these passengers must be drawn to the emergency instructions required under §§ 199.80(a) and 199.80(c) of this chapter if another muster is not held.

(3) On each vessel on a short international voyage, and on each other vessel not on an international voyage, a muster of the passengers must be held on departure, or else—

(i) For voyages of more than one day's duration, musters of the passengers must be in accordance with paragraph (b)(2) of this section as for vessels on an international voyage; and

(ii) For voyages of less than one day's duration, the attention of the passengers must be drawn to the emergency instructions required under § 199.80(a) and 199.80(c) of this chapter.

(4) Each abandon-ship drill must include:

(i) Summoning of passengers and crew to muster stations with the general alarm and making sure that they are made aware of how the order to abandon ship is given, as specified in the station bill.

(ii) Simulation of an abandon-ship emergency which varies from drill to drill.

(iii) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular abandon-ship emergency being simulated.

(iv) Checking to see that passengers and crew are suitably dressed.

(v) Checking to see that lifejackets are correctly donned.

(vi) Lowering of at least one lifeboat after any necessary preparation for launching. The lifeboat must be lowered at least to the extent where the davit head has completed its travel and the fall wire has begun to pay out.

(vii) Starting and operating the lifeboat engine.

(viii) Operation of davits used for launching liferafts.

(5) Different lifeboats must, as far as practicable, be lowered to meet paragraph (b)(4)(v) of this section at successive drills.

(6) Each abandon-ship drill must, as far as practicable, be conducted as if there were an actual emergency.

(7) Each lifeboat must be launched with its assigned operating crew aboard and maneuvered in the water at least once every 3 months during an abandon-ship drill. Except for vessels on international voyages which are not short international voyages, the OCMI may allow a vessel not to launch the lifeboats on one side of the vessel if the berthing arrangements in port and the trading pattern does not permit launching of lifeboats on that side. However, each such lifeboat must be lowered at least once every 3 months and launched at least annually.

(8) Each rescue boat that is not also a lifeboat must be launched with its assigned crew aboard and maneuvered in the water—

(i) Once each month, if reasonable and practicable; but

(ii) At least once every 3 months.

(9) If lifeboat and rescue boat launching drills are carried out with the vessel making headway, such drills must, because of the dangers involved, be practiced only in waters where it is safe, under the supervision of an officer experienced in such drills.

(10) At least one drill every 3 months must be held at night, unless the master determines it is unsafe.

(11) Emergency lighting for mustering and abandonment must be tested at each abandon-ship drill.

(c) The master of a vessel carrying immersion suits shall make sure that—

(1) Each crew member either—

(i) Wears an immersion suit in at least one abandon-ship drill per month unless it is impracticable due to warm weather; or

(ii) Participates in at least one immersion suit drill per month that

includes donning an immersion suit and being instructed in its use;

(2) If immersion suits are carried for passengers—

(i) In each abandon-ship drill, passengers are instructed in the use of immersion suits; and

(ii) Passengers are told at the beginning of the voyage where immersion suits are stowed on board and are encouraged to read the instructions for donning and use of the immersion suits.

(d) The master of a vessel carrying thermal protective aids shall make sure that—

(1) In each abandon-ship drill, passengers are instructed in the use of thermal protective aids; and

(2) Passengers are told at the beginning of the voyage where thermal protective aids are stowed on board and are encouraged to read the instructions for donning and use of the thermal protective aids.

(e) Each crew member on board the vessel must be given training in the use of lifesaving appliances and the duties assigned in the station bill.

(1) Except as provided under paragraph (e)(2) of this section, onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, must be given to each crew member as soon as possible, but not later than 2 weeks after the crew member joins the vessel.

(2) If a crew member is on a regularly scheduled rotating assignment to a vessel, onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, must be given to the crew member not later than 2 weeks after the time the crew member first joins the vessel.

(3) The crew must be instructed in the use of the vessel's lifesaving appliances and in survival at sea at the same interval as the abandon-ship drills. If individual instruction sessions cover different parts of the vessel's lifesaving system, all the vessel's lifesaving equipment and appliances must be covered within each 2 month period. Each member of the crew must be instructed in at least—

(i) Operation and use of the vessel's inflatable liferafts;

(ii) Problems of hypothermia, first-aid treatment for hypothermia and other appropriate first-aid procedures; and

(iii) Special instructions necessary for use of the vessel's lifesaving appliances in severe weather and severe sea conditions.

(4) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on each vessel with davit-launched liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special liferaft intended for training purposes only, and is not part of the vessel's lifesaving equipment, this liferaft must be conspicuously marked.

(f) The date when musters are held, details of abandon-ship drills, drills of other lifesaving appliances and onboard training must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill or training session.

(3) Identification of survival craft used in drills.

(4) Subject of training session.

(5) Statement as to the condition of the equipment used.

(6) If a full muster, drill or training session is not held at the appointed time, the circumstances and the extent of the muster, drill or training session held.

§ 78.17-52 [Removed]

46. By removing § 78.17–52.

47. By revising § 78.17–55 to read as follows:

§ 78.17-55 Fire drills.

(a) A fire drill must be conducted on each vessel at least once each week. The fire drill must not be conducted as part of the abandon-ship drill, nor immediately prior to or after the abandon-ship drill. If a fire drill cannot be held during any week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(b) Any member of the crew excused from a fire drill must participate in a later drill, so that each member participates in at least one fire drill each month. If more than 25% of the crew have not participated in a fire drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G–MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(c) Each fire drill must include:

(1) Summoning of passengers and crew to their stations with the general alarm.

(2) Simulation of a fire emergency which varies from drill to drill.

(3) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is in proper working order.

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency equipment lockers, and demonstrating the use of each item by the person or persons designated to use it.

(6) Operating each watertight door used while the vessel is underway.

(7) Operation of each self-closing fire door.

(8) Closing all fire doors and doors in fire boundaries.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The date when fire drills are held, and details of fire drills must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill.

(3) Number and lengths of hose used.

(4) Statement as to the condition of the equipment used.

(5) If a full drill is not held at the appointed time, the circumstances and the extent of the drill held.

§ 78.17-60 [Removed]

48. By removing § 78.17–60.

§ 78.17-70 [Removed]

49. By removing § 78.17–70.

§ 78.17-85 [Removed]

50. By removing § 78.17–85.

§ 78.17-90 [Removed]

51. By removing § 78.17–90.

52. By revising paragraphs (a)(1) and (a)(10) of § 78.37–5 to read as follows:

§ 78.37-5 Actions required to be logged.

(a) * * *

(1) Abandon-ship training and drills, and fire drills. As held. See §§ 78.17–50, and 78.17–55.

* * * * *

(10) Survival craft winches. Once in each three months. See § 78.95–73.

* * * * *

Subpart 78.47—Markings for Fire and Emergency Equipment, Etc.

§ 78.47-47 [Removed]

53. By removing § 78.47–47.

§ 78.47-50 [Removed]

54. By removing § 78.47–50.

§ 78.47-51 [Removed]

55. By removing § 78.47-51.

56. By revising § 78.47-60 to read as follows:

§ 78.47-60 Lifeboats and rescue boats.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the boat. The boats on each side of the vessel must be numbered from forward to aft. If there are boats on both sides of the vessel, the odd numbers must be on the starboard side.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 35 mm (1.5 in.) high:

(1) The length and beam of the boat.

(2) The number of persons capacity of the boat. This number must—

(i) Be the number of persons the lifeboat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat in at least two places visible from above the boat in letters and numbers not less than 75 mm (3 in.) high:

(1) The number of persons capacity of the boat.

(2) The name of the vessel.

(d) The name of the vessel must be plainly marked or painted on each oar and paddle.

(e) On or before July 1, 1991, each lifeboat and rescue boat must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

57. By adding a new § 78.47-62 to read as follows:

§ 78.47-62 Rigid liferafts.

(a) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the liferaft. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 35 mm (1.5 in.) high.

(1) Either "SOLAS A Pack" or "SOLAS B Pack" depending upon its equipment under § 199.143(b) or § 199.143(c) of this chapter.

(2) The length of the painter.

(c) The number of persons capacity must be plainly marked or painted over each entrance to each rigid liferaft in letters and numbers at least 100 mm (4 in.) high, in a color contrasting to that of the liferaft. This number must—

(1) Be the number of persons the liferaft is equipped for; and

(2) Not be greater than the number of persons the liferaft is approved for, as shown on its nameplate.

(d) The name of the vessel must be plainly marked or painted on each paddle.

58. By revising § 78.47-63 to read as follows:

§ 78.47-63 Inflatable liferafts.

The number of the liferaft and the number of persons it is permitted to accommodate must be marked or painted in a conspicuous place in the immediate vicinity of each inflatable liferaft in letters and numbers at least 35 mm (1.5 in.) high. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats. This marking must not be on the inflatable liferaft container.

59. By adding a new § 78.47-64 to read as follows:

§ 78.47-64 Life floats and buoyant apparatus.

(a) The name of the vessel must be plainly marked or painted on each life float and buoyant apparatus, together with their oars and paddles.

(b) The number of persons capacity must be plainly marked or painted on each life float and buoyant apparatus in letters and numbers at least 35 mm (1.5 in.) high. This number must–

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for, as shown on its nameplate.

60. By revising § 78.47-65 to read as follows:

§ 78.47-65 Lifejackets, immersion suits, and ring life buoys.

(a) Each lifejacket, immersion suit, and ring life buoy must be marked in block capital letters with the vessel's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 50 mm (2 in.) high with the number and identification of the items stowed inside and their size.

(c) Each ring life buoy on a vessel in ocean service must be marked in block capital letters with the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(d) Each stowage position for a ring life buoy must be marked "LIFE BUOY".

(e) Each lifejacket must be marked with Type I retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

(f) On or before July 1, 1991, each ring life buoy must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

Note: Each approved immersion suit is provided with retroreflective material by the manufacturer of the suit.

61. By revising § 78.47-72 to read as follows:

§ 78.47-72 EPIRBs and SARTs.

The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except for an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

§ 78.49-1 [Removed]

62. By removing Subpart 78.49 (consisting of § 78.49-1).

§§ 78.87-1, 78.87-5, and 78.87-10 [Removed]

63. By removing Subpart 78.87 (consisting of §§ 78.87-1, 78.87-5, and 78.87-10).

64. By adding a new Subpart 78.95 to read as follows:

Subpart 78.95—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

§ 78.95-20 Operational readiness.

(a) Except as provided in § 78.95-30(e), each lifesaving appliance and each item of survival craft, rescue boat, life float, and buoyant apparatus equipment must be in good working order and ready for immediate use before the vessel leaves port and at all times when the vessel is in navigation.

(b) Each deck where lifeboats, liferafts, life floats, and buoyant apparatus are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the lifesaving appliances.

(c) If lifeboats are used to carry persons to and from the vessel when the vessel is in a harbor or at an anchorage, there must be a sufficient number of lifeboats and liferafts available for use to accommodate all persons remaining on board.

§ 78.95-30 Maintenance.

(a) The manufacturer's instructions for onboard maintenance of lifesaving appliances must be onboard and must include the following for each appliance—

(1) Checklists for use when carrying out the inspections required under § 78.95-70(a);

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The master shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) For lifesaving appliances constructed on or before July 1, 1986, paragraph (a) of this section need only be complied with to the extent that the manufacturer's instructions are available.

(d) The OCMI may accept, instead of the instructions required under paragraph (a) of this section, a shipboard planned maintenance program that includes the items listed in that paragraph.

(e) If lifeboats, rescue boats, and rigid liferafts are maintained and repaired while the vessel is underway, there must be a sufficient number of lifeboats and liferafts available for use to accommodate all persons on board.

(f) Except in an emergency, extensive repairs or alterations must not be made to any lifesaving appliance without advance notification of the OCMI. Insofar as possible, each repair or alteration must be made in accordance with the requirements for the lifesaving appliance in Subchapter Q of this chapter. The OCMI may require each lifesaving appliance that has been altered or extensively repaired to be subjected to each test for the appliance in Subchapter Q of this chapter that is affected by the repair or alteration.

(g) The master shall report each emergency repair or alteration to a lifesaving appliance as soon as practicable to the OCMI in the next port in the United States where the vessel calls. If the vessel does not regularly call at ports in the United States, the report must be made to the OCMI responsible for one of the foreign ports where the vessel calls.

(h) A lifeboat or rigid liferaft must not be repaired or reconditioned for use on a vessel other than the one it was originally built for, unless specifically permitted by the OCMI. If required by the OCMI, the repair or reconditioning of the lifeboat or rigid liferaft must be made under the OCMI's supervision.

§ 78.95-40 Maintenance of falls.

(a) Each fall used in a launching appliance must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is the earlier.

(c) Each fall must have a corrosion-resistant tag with the following permanently marked on it:

(1) The date the new fall was installed.

(2) If the fall has been turned end for end, the date it was turned.

§ 78.95-50 Spare parts and repair equipment.

Spare parts and repair equipment must be provided for each lifesaving appliance and component subject to excessive wear or consumption and that needs to be replaced regularly. These parts and equipment must be kept on board the vessel, or, if the vessel operates daily out of the same shore base, these parts and equipment may be kept at the shore base.

§ 78.95-60 Weekly maintenance and inspection.

The following tests and inspections must be carried out weekly:

(a) Each survival craft, rescue boat and launching appliance must be visually inspected to ensure its readiness for use.

(b) Each lifeboat engine and rescue boat engine must be run ahead and astern for not less than 3 min., unless the ambient temperature is below the minimum temperature required for starting the engine.

(c) The general alarm system must be tested.

(d) Each battery for lifeboat and rescue boat engine starting, searchlights, fixed lifeboat radio installations, and portable radio apparatus must be brought up to full charge at least once each week if—

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

(e) The transmitter of each fixed lifeboat radio installation and portable radio apparatus must be tested at least once each week using a dummy antenna load.

§ 78.95-70 Monthly inspections.

(a) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly using the checklist required under § 78.95-30(a)(1) to make sure it is complete and in good order. A report of the inspection, including a statement as to the condition of the equipment, must be recorded in the vessel's official logbook.

(b) Each EPIRB and each SART other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and output indicator to determine that it is operative.

§ 78.95-73 Quarterly inspections.

(a) Each lifeboat winch control apparatus, including motor controllers, emergency switches, master switches, and limit switches must be examined once each three months.

(b) The examination must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

(c) The date of the examination required under this section and the condition of the equipment must be noted in the official logbook.

§ 78.95-75 Annual inspection and repair.

(a) Each lifeboat, rescue boat, rigid liferaft, buoyant apparatus, and life float must be stripped, cleaned, and thoroughly inspected and repaired as needed at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired as needed once each year.

(c) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of survival equipment and clearly marked with a date identified as an expiration date must be replaced during the annual

inspection and repair if the expiration date has passed.

(e) Except for a storage battery used in a lifeboat or rescue boat, each battery without an expiration date used in an item of survival equipment must be replaced during the annual inspection and repair.

(f) The requirements in this section do not relieve the master or person in charge of the requirement under § 78.95–20(a) to keep the equipment ready for immediate use.

§ 78.95–80 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable lifejackets and inflated rescue boats.

(a) Each inflatable liferaft, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced—

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

(b) Each inflatable liferaft must be serviced—

(1) Whenever the container of the raft is damaged, or the straps or seal broken; and

(2) In accordance with the servicing procedure under Subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under Subpart 160.076 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under Subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant (G–MVI), except for emergency repairs carried out on board the vessel.

§ 78.95–90 Periodic servicing of hydrostatic release units.

(a) Each hydrostatic release unit must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under Subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic release unit must be renewed when the unit is serviced and tested.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

65. The authority citation for Part 90 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

66. By adding a new Subpart 90.27 to read as follows:

Subpart 90.27—Lifesaving Appliances and Arrangements

§ 90.27–1 General.

Lifesaving appliances and arrangements on cargo and miscellaneous vessels must meet Subchapter W of this chapter.

PART 91—INSPECTION AND CERTIFICATION

67. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

Subpart 91.20—Initial Inspection

68. By revising paragraph (a)(1) of § 91.20–20 to read as follows:

§ 91.20–20 Specific tests and inspections.

(a) * * *

(1) The following tests and inspections and the tests and inspections in § 91.25–15(a)(5) through § 91.25–15(a)(9) must be conducted for each initial inspection for certification. The tests and inspections under paragraph (a)(1)(i) of this section must also be conducted when each new davit, winch, or other launching appliance is installed on the vessel. The test under paragraph (a)(1)(ii) of this section must also be conducted when each new lifeboat or rescue boat is installed on the vessel. The inspection under paragraph (a)(1)(vi) of this section must also be conducted when each new lifeboat, rescue boat, liferaft, davit, winch, or other launching appliance is installed on the vessel. The test under paragraph (a)(1)(vii) of this section must also be conducted when each new life buoy quick release device is installed on the vessel.

(i) Each launching appliance using falls and a winch for a rescue boat, davit-launched liferaft, or lifeboat including any auxiliary davit system for a free-fall lifeboat must be tested as follows:

(A) The lifeboat, rescue boat or davit-launched liferaft must be loaded with all of its equipment or the deadweight equivalent. In addition, the davit-launched liferaft must be loaded with a 75 kg (165 lb.) weight to simulate the load of one person. A davit-launched liferaft is not required for this test if an appropriate test weight is used. The boat or liferaft must be lowered from the embarkation station and launched into the water using the normal launching procedure. If a test weight is substituted for the davit-launched liferaft, the weight must be "launched" onto a surface that will support its weight. The rescue boat must then be loaded with the deadweight equivalent of its full rescue boat complement using a weight of 75 kg (165 lb.) per person. In the case of a lifeboat or rescue boat launching appliance, the boat must then be recovered by the launching appliance. In the case of a liferaft launching appliance, the hand-operated quick-return mechanism must be used to recover the fall.

(*1*) There must be no deformation of or damage to the launching appliance or its connections to the vessel.

(*2*) The lowering speed must meet § 199.153(j) of this chapter, and the falls must meet § 199.153(g) of this chapter. For a multiple drum winch, the falls must wind off the drums at the same rate when lowering, and wind onto the drums evenly in a level wrap at the same rate when hoisting.

(*3*) The release mechanism control in a boat must open all hooks simultaneously and release the boat into the water.

(*4*) The automatic disengaging apparatus for a davit-launched liferaft must open and release the liferaft or test weight after the apparatus is set to open automatically and the liferaft or test weight is set on the surface.

(*5*) The recovery of the boat must meet § 199.153(1) of this chapter, and if the boat is a rescue boat, § 199.160(d) of this chapter.

(*6*) For each launching device equipped to recover a boat by power, including a launching device with a portable power source, the limit switches or other safety devices must automatically cut off the power before the boat reaches the stops to avoid overstressing the falls and davits.

(*7*) The hand-operated recovery gear for a lifeboat or rescue boat launching appliance must be capable of moving the boat into its stowed position where the boat can be safely and properly secured.

(*8*) The operation of the hand-operated quick-return mechanism on a davit-launched liferaft launching appliance must be smooth, rapid, and easy enough for one person to recover the fall.

(B) If the lowering of a lifeboat or rescue boat is controlled from within the

boat by a control wire wound on an auxiliary drum on the winch, the launching of the boat must be tested with the boat loaded as under paragraph (a)(1)(i)(A) of this section, but with an operator inside.

(*1*) The mass of the control wire must be sufficient to overcome the friction of the sheaves used on the control wire when the launching appliance is being operated by the on-deck controls.

(*2*) The control wire must properly operate the winch brake.

(*3*) The winch brake must not be affected by the mass of the fully extended control wire.

(*4*) There must be sufficient length of control wire available inside the boat to operate the winch brake during all stages of lowering.

(*5*) The free end of the control wire must be retained within the boat until the boat is released from the falls by the operator.

(C) The test procedure under paragraph (a)(1)(i)(A) of this section must be repeated with the lifeboat, rescue boat or liferaft loaded with weight equivalent to all of its equipment and full complement of persons, plus 10% of the total weight of the loaded boat or liferaft. In the case of a davit-launched liferaft, the automatic disengaging apparatus must be set to release. The on-deck launching controls must be used for this test, with the boat or liferaft being stopped after it has reached its maximum lowering speed, and then at approximately 2 m (6 ft.) intervals. In the case of a lifeboat or rescue boat, when the boat reaches a position just above the water, it must be released from the falls using the on-load release mechanism control.

(*1*) There must be no deformation of or damage to the launching appliance or its connections to the vessel.

(*2*) The lowering speed must meet §§ 199.153(i) and 199.153(k) of this chapter, and the falls must meet § 199.153(g) of this chapter.

(*3*) The launching appliance must bring the boat or raft to a stop within 1 m (39 in.) by application of the brake by the winch counterweight alone.

(*4*) The brake action must be smooth and positive.

(*5*) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(*6*) The boat or raft must begin to lower each time the brake is released. No additional force is permitted.

(*7*) The release mechanism control in a boat must open all hooks simultaneously and release the boat into the water.

(*8*) The automatic disengaging apparatus for a davit-launched liferaft must not release the liferaft or test weight until the liferaft or test weight is set on the surface.

(D) The release apparatus for a davit launched liferaft must be tested to determine that it will release under a towing strain. The liferaft or test weight loaded as required under paragraph (a)(1)(i)(C) of this section must be suspended just above the surface and the release apparatus set to open automatically. A horizontal towing strain sufficient to pull the falls 5° from vertical must be applied to the liferaft or test weight and the liferaft lowered. The release apparatus must release the liferaft or test weight as it is set on the surface.

(E) If any winch brake surface is exposed to the weather, the test under paragraph (a)(1)(i)(C) of this section must be conducted with the brake surfaces dry and repeated with the brake surfaces wet. The brake must stop the winch when the brake surface is wet, but the stopping distance requirement does not apply.

(ii) Each free-fall launched lifeboat and launching system must be tested as follows with the vessel at its lightest seagoing draft:

(A) The lifeboat loaded with only its normal equipment or the deadweight equivalent of the equipment, must be launched into the water. After launching, the boat must be retrieved and examined.

(*1*) The free-fall release mechanism must operate properly and release the boat from the launching appliance.

(*2*) The launching system must operate smoothly, must launch the boat into the water at the intended angle, and must not show any evidence of improper operation.

(*3*) The lifeboat must not show any evidence of instability in the air or in the water.

(*4*) There must be no deformation of or damage to the lifeboat, the launching appliance or its connections to the vessel.

(B) The procedure under paragraph (a)(1)(ii)(A) of this section must be repeated with each seat in the lifeboat loaded with 75 kg (165 lb.) of deadweight properly secured in place to simulate the weight of one person.

(*1*) The inspections required under paragraphs (a)(1)(ii)(A)(*1*) through (a)(1)(ii)(A)(*4*) of this section must be performed.

(*2*) Each seat and its mounting arrangements must be closely inspected. There must be no deformation or damage to any seat or its mounting arrangements.

(*3*) If the inspector has reason to believe that the boat is not being launched in a safe and proper manner, the inspector may order the test under this paragraph (paragraph (a)(1)(ii)(B) of this section) to be repeated with the boat instrumented with acceleration monitoring equipment. The data must be compared with the approval test data to determine whether or not the boat is being launched in a safe and proper manner.

(C) The procedure under paragraph (a)(1)(ii)(A) of this section must be repeated with at least one operator aboard the lifeboat. The rest of the seats in the lifeboat must be empty, loaded with deadweight, or with personnel to the satisfaction of the inspector. The launching of the lifeboat must be completely controlled by the personnel in the lifeboat.

(*1*) The inspections required under paragraphs (a)(1)(ii)(A)(*1*) through (a)(1)(ii)(A)(*4*) of this section must be performed.

(*2*) There must be no injury to any of the personnel in the lifeboat.

(iii) Each lifeboat and rescue boat must be operated in the water for at least 2 hr. During this time, the propulsion system must be operated both forward and astern. At least 1 hr. of this running time must be with the propulsion system operating at full speed. Each boat system such as any powered bilge pump, water spray system, or air supply system must be operated.

(A) The boat and each of its systems must operate properly without overheating or being damaged.

(B) The boat must not have any evident leakage through the hull or around any through-hull fitting.

(iv) An abandon-ship simulation must be held to determine that all survival craft required for abandonment by the total number of persons permitted on board, can be launched with their full complement of persons and equipment within 10 min. from the time the abandon-ship signal is given.

(A) This simulation must include loading and launching of sufficient survival craft to demonstrate that the requirement can be met.

(B) This test is not required if the Coast Guard has witnessed a successful test on a sister vessel with the same lifesaving appliance arrangements.

(v) One lifeboat and one rescue boat of each type on board must be launched with the vessel proceeding at a speed of approximately 5 knots. No particular loading of the boat is required. The boat must not give any indication that it is

unstable or out of control during the launching procedure.

(vi) The installation of each lifeboat, rescue boat, liferaft and launching appliance must be inspected to determine that it meets each condition of its approval, as listed on its Certificate of Approval (Form CGHQ 10030).

(vii) The quick release device for ring life buoys required for certain vessels under § 199.70(c) of this chapter, must be tested to demonstrate that the ring life buoy and its attachments drop clear of the side of the vessel when released. A self-activating smoke signal is not required for this test if a dummy device of comparable size and weight is used.

* * * * *

Subpart 91.25—Inspection for Certification

69. By revising § 91.25–15 to read as follows:

§ 91.25–15 Lifesaving equipment.

(a) At each inspection for certification, the following inspections and tests must be conducted in the presence of a marine inspector, or as otherwise directed by the OCMI:

(1) Each air tank provided for buoyancy on a lifeboat, liferaft, buoyant apparatus or life float, must be tested and demonstrated to be airtight.

(2) Each lifeboat and rescue boat gravity davit including each auxiliary davit system for a free-fall lifeboat, and each davit-launched liferaft launching device must be used to lower the boat or liferaft from its stowed position to a point near the water using the on-deck launching appliance controls. This test must be conducted twice; once with the boat or liferaft loaded with all equipment and additional weight of not more than one person, and a second time with the weight of a full load of persons and equipment. A davit-launched liferaft is not required for this test if an appropriate test weight is used. During the lowering, the brake must be applied and released at least five times.

(i) The launching appliance must bring the boat, liferaft, or test weight to a stop by application of the brake by the winch counterweight alone.

(ii) The brake action must be smooth and positive.

(iii) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(iv) Lowering must begin each time the brake is released. No additional force is permitted.

(3) Each lifeboat and rescue boat on a davit must be lowered to a point just above the water and evenly loaded until the total weight of the boat equals the "B" weight on the boat data plate. If the boat is equipped with mechanical disengaging apparatus, the release mechanism control must be operated and must open all hooks simultaneously and release the boat into the water properly. There must be no evident damage or deformation of the boat, the launching appliance, or its connections to the vessel.

(4) Each free-fall launched lifeboat and launching system must be tested with the lifeboat loaded with only its normal equipment or the deadweight equivalent of the equipment. The lifeboat must be launched into the water. After launching, the boat must be retrieved and examined.

(i) The free-fall release mechanism must operate properly and release the boat from the launching appliance.

(ii) The launching system must operate smoothly, must launch the boat into the water at the intended angle, and must not show any evidence of improper operation.

(iii) The lifeboat must not show any evidence of instability in the air or in the water.

(iv) There must be no deformation of or damage to the lifeboat, the launching appliance or its connections to the vessel.

(5) The procedure under paragraph (a)(4) of this section must be repeated with each seat in the lifeboat loaded with 75 kg (165 lb.) of deadweight properly secured in place to simulate the weight of one person.

(i) The inspections required under paragraphs (a)(4)(i) through (a)(4)(iv) of this section must be performed.

(ii) Each seat and its mounting arrangements must be closely inspected. There must be no deformation or damage to any seat or its mounting arrangements.

(6) If the inspector has reason to believe that the free-fall boat is not being launched in a safe and proper manner, the inspector may order the test under paragraphs (a)(4) and (a)(5) of this section to be repeated with the boat instrumented with acceleration monitoring equipment. The data must be compared with the approval test data to determine whether or not the boat is being launched in a safe and proper manner.

(7) The procedure under paragraph (a)(4) of this section must be repeated with at least one operator aboard the lifeboat. The rest of the seats in the lifeboat must either be empty, loaded with deadweight, or with personnel to the satisfaction of the inspector. The launching of the lifeboat must be completely controlled by the personnel in the lifeboat.

(A) The inspections required under paragraphs (a)(4)(i) through (a)(4)(iv) of this section must be performed.

(B) There must be no injury to any of the personnel in the lifeboat.

(8) Each davit-launched liferaft launching appliance must be loaded with a weight equal to the liferaft loaded with its full load of persons and equipment. The weight must be lowered to a point just above the water, dock or other surface that will support the weight. The automatic disengaging apparatus control must be set to release, and must open when the weight is lowered to and supported by the surface. There must be no evident damage or deformation of the release mechanism, launching appliance, or its connections to the vessel.

(9) Each lifejacket, immersion suit, and work vest must be examined to determine that it is in serviceable condition. Each lifejacket, immersion suit, and work vest not in serviceable condition must be either repaired, or destroyed and removed from the vessel. The marine inspector may mark the lifejackets, immersion suits, and work vests to indicate that they have been inspected and passed.

(10) The control apparatus for each electrically-controlled launching appliance winch must be opened, inspected, and determined to be in serviceable condition.

(11) Each inflatable liferaft and inflatable lifejacket must be inspected to determine that it has been serviced under § 97.90–80 of this chapter.

(12) Each hydrostatic release unit must be inspected to determine that it has been serviced under § 97.90–90 of this chapter.

(13) Each other item of lifesaving equipment on the vessel must be inspected to determine that it is in serviceable condition. Each item not in serviceable condition must be repaired or replaced. Each item of survival equipment with an expiration date on it must be replaced if the expiration date has passed.

(14) An abandon-ship drill must be held. The marine inspector specifies the nature of the emergency to be simulated.

PART 94—LIFESAVING EQUIPMENT

70. By removing and reserving Part 94.

70a. The following Table of Contents for Part 97 reflects new or revised subparts to read as follows:

PART 97—OPERATIONS

Subpart 97.00—Incorporation by reference

Sec.
97.00–1 Incorporation by reference.
* * * * *

Subpart 97.13—Emergency Signals

97.13–1 Emergency signals.

Subpart 97.14—Manning of Survival Craft and Supervision

97.14–1 Certificate of proficiency.
97.14–5 Manning and supervision.

Subpart 97.90—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

97.90–20 Operational readiness.
97.90–30 Maintenance.
97.90–40 Maintenance of falls.
97.90–50 Spare parts and repair equipment.
97.90–60 Weekly inspection.
97.90–70 Monthly inspections.
97.90–73 Quarterly inspections.
97.90–75 Annual inspection and repair.
97.90–80 Servicing of inflatable liferafts, inflatable lifejackets and inflated rescue boats.
97.90–90 Periodic servicing of hydrostatic release units.

71. The authority citation for Part 97 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 6101, 8105; 49 CFR 1.46.

72. By adding Subpart 97.00 to read as follows:

Subpart 97.00 Incorporation by reference.

§ 97.00–1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.
ASTM D93–80, Test for Flash Point by Pennsky-Martens Closed Tester: 97.15–55.

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England.

Resolution [LSR 19/WP.4, Annex 3], "Guidelines Concerning the Use and Fitting of Retroreflective Materials on Life-saving Appliances", June 1987: 97.37–37; 97.37–43.

73. By revising Subpart 97.13 to read as follows:

Subpart 97.13—Emergency Signals

§ 97.13–1 Emergency signals.

(a) *General.* The various signals used to call the crew to their stations and to give instructions to the crew must be listed on the station bill required under § 199.80 of this chapter. The signals must be as follows:

(1) The fire and emergency signal must consist of a continuous blast of the whistle for not less than 10 seconds followed by the continuous ringing of the general alarm bells for not less than 10 seconds.

(2) The signal for dismissal from fire alarm stations must consist of ringing of the general alarm bells three times, followed by three short blasts of the whistle.

(3) The signal for boat stations or boat drill must consist of a succession of more than six short blasts, followed by one long blast of the whistle, followed by the same signal on the general alarm bells.

(4) A man-overboard signal must be established.

(5) An abandon-ship signal must be established.

(6) The signal to lower lifeboats or davit launched liferafts must consist of one short blast of the whistle.

(7) The signal to stop lowering lifeboats or davit launched liferafts must consist of two short blasts of the whistle.

(8) The signal for dismissal from boat stations must consist of three short blasts of the whistle.

(9) Each other emergency signal established must not conflict with navigational signals or other general alarm signals.

(b) *River service.* For vessels in river service where a whistle is not used, the ship's bell must be used for the whistle signals described in this section.

74. By revising Subpart 97.14 to read as follows:

Subpart 97.14—Manning of Survival Craft and Supervision

§ 97.14–1 Certificate of proficiency.

A merchant mariner's document endorsement as a lifeboatman or another inclusive rating under Part 12 of this Title is evidence of training in survival craft and serves as a certificate of proficiency. For the purposes of this subpart, a "certificated person" is a person holding a merchant mariner's document with such an endorsement.

§ 97.14–5 Manning and supervision.

(a) There must be a sufficient number of trained persons on board for mustering and assisting untrained persons.

(b) There must be a sufficient number of deck officers, able seamen, or certificated persons on board to operate the survival craft and launching arrangements required for abandonment by the total number of persons permitted on board.

(c) One person must be placed in charge of each survival craft to be used.

(1) Except for vessels in river service, the person in command must be a deck officer, able seaman, or certificated person.

(2) A deck officer, able seaman, or certificated person must be designated second-in-command for—

(i) Each lifeboat on a vessel in ocean service; and

(ii) Except on a vessel in river service, each lifeboat permitted to carry more than 40 persons.

(3) Each vessel that carries passengers and is not in river service, must have at least one deck officer, able seaman, or certificated person for every 20 passengers assigned to each lifeboat.

(d) The person in charge of each survival craft shall have a list of the survival craft crew and shall see that the crewmembers are acquainted with their duties. The second-in-command of a lifeboat shall also have a list of the lifeboat crew.

(e) Each motorized survival craft must have a person assigned who is capable of operating the engine and carrying out minor adjustments.

(f) The master shall make sure the persons required under paragraphs (a), (b), and (c) of this section are equitably distributed among the vessel's survival craft.

Subpart 97.15—Tests, Drills, and Inspections

75. By removing paragraph (a)(3) of § 97.15–25.

76. By revising § 97.15–35 to read as follows:

§ 97.15–35 Abandon-ship training and drills.

(a) Abandon-ship training material must be on board each vessel. The training material must consist either of a manual of one or more volumes, or audio-visual training aids, or both.

(1) The training material must contain instructions and information on the lifesaving appliances on the vessel and

on the best methods of survival. A training manual must be written in easily understood terms, illustrated wherever possible.

(2) If a training manual is used, a copy must be in each crew messroom and recreation room or in each crew cabin. If audio-visual training aids are used they must be incorporated in the onboard training sessions under paragraph (d) of this section.

(3) The training material must explain the following in detail:

(i) Donning of the lifejackets and immersion suits carried on board.

(ii) Muster at the assigned stations.

(iii) Boarding, launching, and clearing the survival craft and rescue boats.

(iv) Method of launching from within the survival craft.

(v) Release from launching appliances.

(vi) Method and use of devices for protection in launching areas, where appropriate.

(vii) Illumination in launching areas.

(viii) Use of all survival equipment.

(ix) Use of all detection equipment.

(x) With illustrations, the use of radio lifesaving appliances.

(xi) Use of sea anchors.

(xii) Use of engine and accessories.

(xiii) Recovery of survival craft and rescue boats including stowage and securing.

(xiv) Hazards of exposure and the need for warm clothing.

(xv) Best use of the survival craft for survival.

(xvi) Methods of retrieval, including the use of helicopter rescue gear (slings, baskets, stretchers), breeches-buoy and shore lifesaving apparatus and vessel's line-throwing apparatus.

(xvii) All other functions contained in the muster list and emergency instructions.

(xviii) Instructions for emergency repair of the lifesaving appliances.

(b) An abandon-ship drill must be conducted on each vessel in alternating weeks. If a drill can not be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(1) Any member of the crew excused from an abandon-ship drill must participate in the next drill, so that each member participates in at least one abandon-ship drill each month. If more than 25% of the crew have not participated in an abandon-ship drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G–MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(2) On a vessel on an international voyage, musters of the passengers must take place within 24 hours after their embarkation. Passengers must be instructed in the use of the lifejackets and the action to take in an emergency. The passengers must be encouraged to participate fully in the abandon-ship drill. If only a small number of passengers embark at a port after the muster has been held, the attention of these passengers must be drawn to the emergency instructions required under § 199.80(a) and 199.80(c) of this chapter if another muster is not held.

(3) On each vessel not on an international voyage, a muster of the passengers must be held on departure, or else—

(i) For voyages of more than one day's duration, musters of the passengers must be in accordance with paragraph (b)(2) of this section as for vessels on an international voyage; and (ii) For voyages of less than one day's duration, the attention of the passengers must be drawn to the emergency instructions required under § 199.80(a) and 199.80(c) of this chapter.

(4) Each abandon-ship drill must include:

(i) Summoning of passengers and crew to muster stations with the general alarm and making sure that they are made aware of the order to abandon-ship as specified in the station bill.

(ii) Simulation of an abandon-ship emergency which varies from drill to drill.

(iii) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular abandon-ship emergency being simulated.

(iv) Checking to see that passengers and crew are suitably dressed.

(v) Checking to see that lifejackets are correctly donned.

(vi) Lowering of at least one lifeboat after any necessary preparation for launching. The lifeboat must be lowered at least to the extent where the davit head has completed its travel and the fall wire has begun to pay out.

(vii) Starting and operating the lifeboat engine.

(viii) Operation of davits used for launching liferafts.

(5) Different lifeboats must, as far as practicable, be lowered to meet paragraph (b)(4)(vi) of this section at successive drills.

(6) Each abandon-ship drill must, as far as practicable, be conducted as if there were an actual emergency.

(7) Each lifeboat must be launched with its assigned operating crew aboard and maneuvered in the water at least once every 3 months during an abandon-ship drill.

(8) Each rescue boat that is not also a lifeboat must be launched with its assigned crew aboard and maneuvered in the water—

(i) Once each month, if reasonable and practicable; but

(ii) At least once every 3 months.

(9) If lifeboat and rescue boat launching drills are carried out with the vessel making headway, such drills must, because of the dangers involved, be practiced only in waters where it is safe, under the supervision of an officer experienced in such drills.

(10) At least one drill every 3 months must be held at night, unless the master determines it is unsafe.

(11) Emergency lighting for mustering and abandonment must be tested at each abandon-ship drill.

(c) The master of a vessel carrying immersion suits shall make sure that—

(1) Each crew member either—

(i) Wears an immersion suit in at least one abandon-ship drill per month unless it is impracticable due to warm weather; or

(ii) Participates in at least one immersion suit drill per month that includes donning an immersion suit and being instructed in its use;

(2) In each abandon-ship drill, each passenger on board is instructed in the use of immersion suits; and

(3) Each passenger is told at the beginning of the voyage where immersion suits are stowed on board and is encouraged to read the instructions for donning and use of the immersion suits.

(d) Each crew member on board the vessel must be given training in the use of lifesaving appliances and the duties assigned in the station bill.

(1) Except as provided under paragraph (d)(2) of this section, onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, must be given to each crew member as soon as possible but not later than 2 weeks after the crew member joins the vessel.

(2) If a crew member is on a regularly scheduled rotating assignment to a vessel, onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, must be given to the crew member not later than 2 weeks after the time the crew member first joins the vessel.

(3) The crew must be instructed in the use of the vessel's lifesaving appliances and in survival at sea on alternating

weeks, normally in the weeks when abandon-ship drills are not held. If individual instruction sessions cover different parts of the vessel's lifesaving system, all the vessel's lifesaving equipment and appliances must be covered within each 2 month period. Each member of the crew must be instructed in at least—

(i) Operation and use of the vessel's inflatable liferafts;

(ii) Problems of hypothermia, first-aid treatment for hypothermia and other appropriate first-aid procedures; and

(iii) Special instructions necessary for use of the vessel's lifesaving appliances in severe weather and severe sea conditions.

(4) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on each vessel with davit-launched liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special liferaft intended for training purposes only, and is not part of the vessel's lifesaving equipment, this liferaft must be conspicuously marked.

(e) The date when musters are held, details of abandon-ship drills, drills of other lifesaving appliances and onboard training must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill or training session.

(3) Identification of survival craft used in drills.

(4) Subject of training session.

(5) Statement as to the condition of the equipment used.

(6) If a full muster, drill or training session is not held at the appointed time, the circumstances and the extent of the muster, drill or training session held.

§ 97.15-37 [Removed]

77. By removing § 97.15-37.

78. By revising § 97.15-40 to read as follows:

§ 97.15-40 Fire drills.

(a) A fire drill must be conducted on each vessel in alternating weeks. The fire drill must not be conducted as part of the abandon-ship drill, nor immediately prior to or after the abandon-ship drill. If a fire drill cannot be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(b) Any member of the crew excused from a fire drill must participate in the next drill, so that each member participates in at least one fire drill each month. If more than 25% of the crew have not participated in a fire drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G-MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(c) Each fire drill must include:

(1) Summoning of passengers and crew to their stations with the general alarm.

(2) Simulation of a fire emergency which varies from drill to drill.

(3) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is in proper working order.

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency equipment lockers, and demonstrating the use of each item by the person or persons designated to use it.

(6) Operating each watertight door used while the vessel is underway.

(7) Operation of each self-closing fire door.

(8) Closing all fire doors and doors in fire boundaries.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The date when fire drills are held, and details of fire drills must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill.

(3) Number and lengths of hose used.

(4) Statement as to the condition of the equipment used.

(5) If a full drill is not held at the appointed time, the circumstances and the extent of the drill held.

§ 97.15-45 [Removed]

79. By removing § 97.15-45.

§ 97.15-50 [Removed]

80. By removing § 97.15-50.

§ 97.15-65 [Removed]

81. By removing § 97.15-65.

§ 97.15-70 [Removed]

82. By removing § 97.15-70.

83. By revising paragraphs (a)(1) and (a)(7) of § 97.35-5 to read as follows:

§ 97.35-5 Actions required to be logged.

(a) * * *

(1) Abandon-ship training and drills, and fire drills. As held. See §§ 97.15-35, and 97.15-40.

* * * * *

(7) Survival craft winches. Once in each three months. See § 97.90-73.

* * * * *

Subpart 97.37—Markings for Fire and Emergency Equipment, Etc.

84. By revising § 97.37-37 to read as follows:

§ 97.37-37 Lifeboats and rescue boats.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the boat. The boats on each side of the vessel must be numbered from forward to aft. If there are boats on both sides of the vessel, the odd numbers must be on the starboard side.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 35 mm (1.5 in.) high:

(1) The length and beam of the boat.

(2) The number of persons capacity of the boat. This number must—

(i) Be the number of persons the lifeboat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat in at least two places visible from above the boat in letters and numbers not less than 75 mm (3 in.) high:

(1) The number of persons capacity of the boat.

(2) The name of the vessel.

(d) The name of the vessel must be plainly marked or painted on each oar and paddle.

(e) On or before July 1, 1991, each lifeboat and rescue boat must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution (LSR 19/WP.4, Annex 3).

85. By adding a new § 97.37-39 to read as follows:

§ 97.37-39 Rigid liferafts.

(a) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the liferaft. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 35 mm (1.5 in.) high:

(1) Either "SOLAS A Pack" or "SOLAS B Pack" depending upon its equipment under § 199.143(b) or § 199.143(c) of this chapter.

(2) The length of the painter.

(c) The number of persons capacity must be plainly marked or painted over each entrance to each rigid liferaft in letters and numbers at least 100 mm (4 in.) high, in a color contrasting to that of the liferaft. This number must—

(1) Be the number of persons the liferaft is equipped for; and

(2) Not be greater than the number of persons the liferaft is approved for, as shown on its nameplate.

(d) The name of the vessel must be plainly marked or painted on each paddle.

86. By revising § 97.37–40 to read as follows:

§ 97.37-40 Inflatable liferafts.

The number of the liferaft and the number of persons it is permitted to accommodate must be marked or painted in a conspicuous place in the immediate vicinity of each inflatable liferaft in letters and numbers at least 35 mm (1.5 in.) high. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats. This marking must not be on the inflatable liferaft container.

87. By adding a new § 97.37–42 to read as follows:

§ 97.37-42 Life floats and buoyant apparatus.

(a) The name of the vessel must be plainly marked or painted on each life float and buoyant apparatus, together with their oars and paddles.

(b) The number of persons capacity must be plainly marked or painted on each life float and buoyant apparatus in letters and numbers at least 35 mm (1.5 in.) high. This number must—

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for, as shown on its nameplate.

88. By revising § 97.37–43 to read as follows:

§ 97.37-43 Lifejackets, immersion suits, and ring life buoys.

(a) Each lifejacket, immersion suit, and ring life buoy must be marked in block capital letters with the vessel's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 50 mm (2 in.) high with the number and identification of the items stowed inside and their size.

(c) Each ring life buoy on a vessel in ocean service must be marked in block capital letters with the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(d) Each stowage position for a ring life buoy must be marked "LIFE BUOY".

(e) Each lifejacket must be marked with Type I retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution (LSR 19/WP.4, Annex 3).

(f) On or before July 1, 1991, each ring life buoy must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution (LSR 19/WP.4, Annex 3).

Note: Each approved immersion suit is provided with retroreflective material by the manufacturer of the suit.

89. By revising § 97.37–55 to read as follows:

§ 97.37-55 EPIRBs and SARTs.

The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except for an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

§ 97.39-1 [Removed]

90. By removing Subpart 97.39 (consisting of § 97.39–1).

§§ 97.85-1, 97.85-5, and 97.85-10 [Removed]

91. By removing Subpart 97.85 (consisting of §§ 97.85–1, 97.85–5, and 97.85–10).

92. By redesignating Subpart 97.90 as Subpart 97.85 and adding a new Subpart 97.90 to read as follows:

Subpart 97.90—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

§ 97.90-20 Operational readiness.

(a) Except as provided in § 97.90–30(e), each lifesaving appliance and each item of survival craft, rescue boat, life float, and buoyant apparatus equipment must be in good working order and ready for immediate use before the vessel leaves port and at all times when the vessel is in navigation.

(b) Each deck where lifeboats, liferafts, life floats, and buoyant apparatus are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the lifesaving appliances.

(c) If lifeboats are used to carry persons to and from the vessel when the vessel is in a harbor or at an anchorage, there must be a sufficient number of lifeboats and liferafts available for use on each side of the vessel to accommodate all persons remaining on board.

§ 97.90-30 Maintenance.

(a) The manufacturer's instructions for onboard maintenance of lifesaving appliances must be onboard and must include the following for each appliance—

(1) Checklists for use when carrying out the inspections required under § 97.90–70(a);

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The master shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) For lifesaving appliances constructed on or before July 1, 1986, paragraph (a) of this section need only be complied with to the extent that the manufacturer's instructions are available.

(d) The OCMI may accept, instead of the instructions required under paragraph (a) of this section, a shipboard planned maintenance program that includes the items listed in that paragraph.

(e) If lifeboats, rescue boats, and rigid liferafts are maintained and repaired while the vessel is underway, there must be a sufficient number of lifeboats and

liferafts available for use on each side of the vessel to accommodate all persons on board.

(f) Except in an emergency, extensive repairs or alterations must not be made to any lifesaving appliance without advance notification of the OCMI. Insofar as possible, each repair or alteration must be made in accordance with the requirements for the lifesaving appliance in Subchapter Q of this chapter. The OCMI may require each lifesaving appliance that has been altered or extensively repaired to be subjected to each test for the appliance in Subchapter Q of this chapter that is affected by the repair or alteration.

(g) The master shall report each emergency repair or alteration to a lifesaving appliance as soon as practicable to the OCMI in the next port in the United States where the vessel calls. If the vessel does not regularly call at ports in the the United States, the report must be made to the OCMI responsible for one of the foreign ports where the vessel calls.

(h) A lifeboat or rigid liferaft must not be repaired or reconditioned for use on a vessel other than the one it was originally built for, unless specifically permitted by the OCMI. If required by the OCMI, the repair or reconditioning of the lifeboat or rigid liferaft must be made under the OCMI's supervision.

§ 97.90-40 Maintenance of falls.

(a) Each fall used in a launching appliance must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is the earlier.

(c) Each fall must have a corrosion-resistant tag with the following permanently marked on it:

(1) The date the new fall was installed.

(2) If the fall has been turned end for end, the date it was turned.

§ 97.90-50 Spare parts and repair equipment.

Spare parts and repair equipment must be provided for each lifesaving appliance and component subject to excessive wear or consumption and that needs to be replaced regularly. These parts and equipment must be kept on board the vessel, or, if the vessel operates daily out of the same shore base, these parts and equipment may be kept at the shore base.

§ 97.90-60 Weekly inspection.

The following tests and inspections must be carried out weekly:

(a) Each survival craft, rescue boat and launching appliance must be visually inspected to make sure it is ready for use.

(b) Each lifeboat engine and rescue boat engine must be run ahead and astern for not less than 3 min., unless the ambient temperature is below the minimum temperature required for starting the engine.

(c) The general alarm system must be tested.

(d) Each battery for lifeboat and rescue boat engine starting, searchlights, fixed lifeboat radio installations, and portable radio apparatus must be brought up to full charge at least once each week if—

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

(e) The transmitter of each fixed lifeboat radio installation and portable radio apparatus must be tested at least once each week using a dummy antenna load.

§ 97.90-70 Monthly inspections.

(a) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly using the checklist required under § 97.90-30(a)(1) to make sure it is complete and in good order. A report of the inspection, including a statement as to the condition of the equipment, must be recorded in the vessel's official logbook.

(b) Each EPIRB and each SART other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and output indicator to determine that it is operative.

§ 97.90-73 Quarterly inspections.

(a) Each lifeboat winch control apparatus, including motor controllers, emergency switches, master switches, and limit switches must be examined once each three months.

(b) The examination must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

(c) The date of the examination required under this section and the condition of the equipment must be noted in the official logbook.

§ 97.90-75 Annual inspection and repair.

(a) Each lifeboat, rescue boat, rigid liferaft, buoyant apparatus, and life float must be stripped, cleaned, and thoroughly inspected and repaired as needed at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired as needed once each year.

(c) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of survival equipment and clearly marked with a date identified as an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(e) Except for a storage battery used in a lifeboat or rescue boat, each battery without an expiration date used in an item of survival equipment must be replaced during the annual inspection and repair.

(f) The requirements in this section do not relieve the master or person in charge of the requirement under § 97.90-20(a) to keep the equipment ready for immediate use.

§ 97.90-80 Servicing of inflatable liferafts, inflatable lifejackets and inflated rescue boats.

(a) Each inflatable liferaft, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced—

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

(b) Each inflatable liferaft must be serviced—

(1) Whenever the container of the raft is damaged, or the strap's or seal broken; and

(2) In accordance with the servicing procedure under Subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under Subpart 160.076 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under Subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant (G-MVI), except for emergency repairs carried out on board the vessel.

§ 97.90–90 Periodic servicing of hydrostatic release units.

(a) Each hydrostatic release unit must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under Subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic release unit must be renewed when the unit is serviced and tested.

SUBCHAPTER I–A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

93. The authority citation for Part 107 is revised to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306; 49 CFR 1.46.

Subpart B—Inspection and Certification

94. By removing and reserving paragraphs (h) and (i), by revising paragraphs (a)(8), (b), (e), (f), (g), (y), and (z), and by adding paragraph (a)(9) to § 107.231 to read as follows:

§ 107.231 Inspection for certification.

* * * * *

(a) * * *

(8) Subchapter S of this chapter, Subdivision and Stability; and

(9) Subchapter W of this chapter, Lifesaving Appliances and Arrangements.

Lifesaving Equipment

(b) Each item of lifesaving equipment on the vessel is in serviceable condition.

(1) Each item not in serviceable condition must be repaired or replaced.

(2) A lifejacket that is cleaned or repaired must meet Subpart 160.006 of this chapter.

(3) The marine inspector may mark the lifejackets, immersion suits, and work vests to indicate that they have been inspected and passed.

(4) Each item of survival equipment with an expiration date on it must be replaced if the expiration date has passed.

* * * * *

(e) Each inflatable liferaft and inflatable lifejacket has been serviced under § 109.317 of this chapter.

(f) Each hydrostatic release unit has been serviced under $ § 109.319 of this chapter.

(g) A successful drill to abandon the unit is held. The marine inspector specifies the nature of the emergency to be simulated.

(h) [Reserved]

(i) [Reserved]

* * * * *

(y) Each new davit or winch meets the tests and inspections in § 31.01–5(c)(1) of this chapter, each new free-fall launching system meets the tests and inspections in § 31.01–5(c)(2) of this chapter, each new lifeboat and rescue boat meets the test in § 31.01–5(c)(3) of this chapter, each new lifeboat, liferaft, rescue boat, davit, winch, or other launching appliance meets the inspection under § 31.01–5(c)(6) of this chapter, and each new ring life buoy quick release device meets the test in § 31.01–5(c)(7) of this chapter.

(z) For the original certificate of inspection, a simulation demonstrates that all survival craft required for abandonment by the total number of persons on board, can be launched with their full complement of persons and equipment within 10 min. from the time the signal to abandon the unit is given. This simulation must include loading and launching of sufficient survival craft to demonstrate that the requirement can be met. This test is not required if the Coast Guard has witnessed a successful test on a sister unit with the same lifesaving appliance arrangements.

* * * * *

95. By revising § 107.239 to read as follows:

§ 107.239 Testing of lifeboats, rescue boats, lifeboat launching systems, and davit-launched liferaft systems.

(a) Each lifeboat and rescue boat gravity davit, and each davit-launched liferaft launching device must be used to lower the boat or liferaft from its stowed position to a point near the water using the on-deck launching appliance controls. This test must be conducted twice; once with the boat or liferaft loaded with all equipment and additional weight of not more than one person, and a second time with the weight of a full load of persons and equipment. A davit-launched liferaft is not required for this test if an appropriate test weight is used. During the lowering, the brake must be applied and released at least five times.

(1) The launching appliance must bring the boat, liferaft, or test weight to a stop by application of the brake by the winch counterweight alone.

(2) The brake action must be smooth and positive.

(3) The brake must be always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the "off" position.

(4) Lowering must begin each time the brake is released. No additional force is permitted.

(b) Each lifeboat and rescue boat must be lowered to a point just above the water. If the test is conducted in sheltered waters, the boat must be evenly loaded until the total weight of the boat equals the "B" weight on the boat data plate. The release mechanism control must be operated and must open all hooks simultaneously and release the boat into the water properly. There must be no evident damage or deformation of the boat, the launching appliance, or its connections to the vessel.

(c) The air supply system of each fire protected lifeboat must be checked by—

(1) Determining that the air regulator is operating properly either by discharging one or more of the air supply cylinders through the regulator, or by checking the flow rate on a test apparatus; and

(2) Making sure each air supply cylinder is fully charged and meets § 147.04–1(a) of this chapter.

(d) The water spray system of each fire protected lifeboat must be checked by operating the pump and determining that all sprinkler heads are operating properly and provide a uniform flow of water over the surface of the lifeboat.

(e) Each davit-launched liferaft launching appliance must be loaded with a weight equal to the liferaft loaded with its full load of persons and equipment. The weight must be lowered to a point just above the water, dock or other surface that will support the weight. The automatic disengaging apparatus control must be set to release, and must open when the weight is lowered to and supported by the surface. There must be no evident damage or deformation of the automatic disengaging apparatus, launching appliance, or its connections to the vessel.

Subpart C—Plan Approval

96. By revising paragraphs (bb) and (cc) of § 107.305 to read as follows:

§ 107.305 Plans and information.

* * * * *

Lifesaving Equipment

(bb) The location and arrangement of each lifesaving system including each embarkation deck, showing each overboard discharge and clearances from projections and obstructions in the way of launching lifeboats, rescue boats, and liferafts throughout the range of list

and trim angles required under Subchapter W of this chapter.

(cc) The weight of each lifeboat, rescue boat, and davit-launched liferaft when fully equipped and loaded.

* * * * *

PART 108—DESIGN AND EQUIPMENT

97. The authority citation for Part 108 continues to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General

98. By revising § 108.101 to read as follows:

§ 108.101 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Bureau of Shipping

45 Eisenhower Dr., Paramus, NJ 07652
Rules for Building and Classing Offshore Mobile Drilling Units, 1980—108.113; 108.705

American National Standards Institute

1430 Broadway, New York, NY 10018
ANSI Z89.1, Industrial Head Protection, 1969—108.497
ANSI A14.3, Fixed Ladders, 1974—108.160

American Petroleum Institute

300 Corrigan Tower Bldg., Dallas, TX 75201
API Spec 2C with supplement 2, Specification for Offshore Cranes, 1972—108.601

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England
Resolution [LSR 19/WP.4, Annex 3], "Guidelines Concerning the Use and Fitting of Retro-reflective Materials on Life-saving Appliances", June 1987—108.645; 108.649

National Fire Protection Association

Batterymarch Park, Quincy, MA 02269
NFPA 407, Standard for Aircraft Fuel Servicing, 1980—108.239
NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations, 1974—108.187

Naval Forms and Publications Center

Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120
Federal Specification ZZ–H–451 F, Hose, Fire, Woven-jacketed Rubber or Cambric-lined with Couplings, 1976—108.425

Underwriters Laboratories

333 Pfingston Rd., Northbrook, IL 60062
UL 19–78, Woven-jacketed Rubber Lined Fire Hose, 1978—108.425

Subpart E—Lifesaving Equipment

99. By revising § 108.501 to read as follows:

§ 108.501 Lifesaving appliances and arrangements.

Lifesaving appliances and arrangements on each unit must meet Subchapter W of this chapter.

§ 108.503 [Removed]

100. By removing § 108.503.

§ 108.505 [Removed]

101. By removing § 108.505.

§ 108.506 [Removed]

102. By removing § 108.506.

§ 108.507 [Removed]

103. By removing § 108.507.

§ 108.508 [Removed]

104. By removing § 108.508.

§ 108.509 [Removed]

105. By removing § 108.509.

§ 108.510 [Removed]

106. By removing § 108.510.

§ 108.511 [Removed]

107. By removing § 108.511.

§ 108.513 [Removed]

108. By removing § 108.513.

§ 108.514 [Removed]

109. By removing § 108.514.

§ 108.515 [Removed]

110. By removing § 108.515.

§ 108.517 [Removed]

111. By removing § 108.517.

§ 108.519 [Removed]

112. By removing § 108.519.

§ 108.521 [Removed]

113. By removing § 108.521.

§ 108.523 [Removed]

114. By removing § 108.523.

§ 108.525 [Removed]

115. By removing § 108.525.

§ 108.527 [Removed]

116. By removing § 108.527.

117. By revising § 108.645 to read as follows:

§ 108.645 Lifeboats and rescue boats.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the unit.

(2) The number of the boat. The boats on each side of the unit must be numbered from forward to aft. If there are boats on both port and starboard sides of the unit, the odd numbers must be on the starboard side.

(3) The name of the port required to be marked on the unit under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 35 mm (1.5 in.) high:

(1) The length and beam of the boat.

(2) The number of persons capacity of the boat. This number must—

(i) Be the number of persons the lifeboat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat in at least two places visible from above the boat in letters and numbers not less than 75 mm (3 in.) high:

(1) The number of persons capacity of the boat.

(2) The name of the unit.

(d) The name of the unit must be plainly marked or painted on each oar and paddle.

(e) On or before July 1, 1991, each lifeboat and rescue boat must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

118. By adding a new § 108.646 to read as follows:

§ 108.646 Rigid liferafts.

(a) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the unit.

(2) The number of the liferaft. Liferafts stowed on the sides of the unit must be numbered in the same manner as the lifeboats.

(3) The name of the port required to be marked on the unit under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 35 mm (1.5 in.) high:

(1) Either "SOLAS A Pack" or "SOLAS B Pack" depending upon its equipment under § 199.143(b) or § 199.143(c) of this chapter.

(2) The length of the painter.

(c) The number of persons capacity must be plainly marked or painted over each entrance to each rigid liferaft in letters and numbers at least 100 mm (4 in.) high, in a color contrasting to that of the liferaft. This number must—

(1) Be the number of persons the liferaft is equipped for; and

(2) Not be greater than the number of persons the liferaft is approved for, as shown on its nameplate.

(d) The name of the unit must be plainly marked or painted on each paddle.

119. By revising § 108.647 to read as follows:

§ 108.647 Inflatable liferafts.

The number of the liferaft and the number of persons it is permitted to accommodate must be marked or painted in a conspicuous place in the immediate vicinity of each inflatable liferaft in letters and numbers at least 35 mm (1.5 in.) high. Liferafts stowed on the sides of the unit must be numbered in the same manner as the lifeboats. This marking must not be on the inflatable liferaft container.

120. By revising § 108.649 to read as follows:

§ 108.649 Lifejackets, immersion suits, and ring life buoys.

(a) Each lifejacket, immersion suit, and ring life buoy must be marked in block capital letters with the unit's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 50 mm (2 in.) high with the number and identification of the items stowed inside and their size.

(c) Each ring life buoy must be marked in block capital letters with the name of the port required to be marked on the unit under Subpart 67.13 of this chapter.

(d) Each stowage position for a ring life buoy must be marked "LIFE BUOY".

(e) Each lifejacket must be marked with Type I retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

(f) On or before July 1, 1991, each ring life buoy must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

Note: Each approved immersion suit is provided with retroreflective material by the manufacturer of the suit.

121. By adding a new § 108.650 to read as follows:

§ 108.650 EPIRBs and SARTs.

The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except for an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

§ 108.655 [Removed]

122. By removing § 108.655.

PART 109—OPERATIONS

123. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306, 6101; 49 CFR 1.46. Section 431 also issued under 46 U.S.C. 11301.

Subpart B—Tests, Drills, and Inspections

124. By adding paragraph (c) to § 109.207 to read as follows:

§ 109.207 Line-throwing equipment.

* * * * *

(c) The master or person in charge shall make sure the line-throwing equipment is not operated in an explosive atmosphere.

§ 109.208 [Removed]

125. By removing § 109.208.

126. By revising § 109.213 to read as follows:

§ 109.213 Fire fighting training and fire drills.

(a) A fire drill must be conducted on each unit in alternating weeks. The fire drill must not be conducted as part of the abandonment drill, nor immediately prior to or after the abandonment drill. If a fire drill cannot be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(b) Any member of the crew or any of the industrial personnel excused from a fire drill must participate in the next drill, so that each person participates in at least one fire drill each month. Each drill must take place within 24 hours of a change in crew or industrial personnel if more than 25% of the persons on board have not participated in a fire drill on board the unit in the previous month.

(c) Each fire drill must include:

(1) Summoning of crew and industrial personnel to their stations with the general alarm.

(2) Simulation of a fire emergency which varies from drill to drill.

(3) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is in proper working order.

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency equipment lockers, and demonstrating the use of each item by the person or persons designated to use it.

(6) Operation of fire doors, watertight doors, and other closing arrangements.

(7) Training in the use of firefighting equipment such as fire pumps, fire hoses and hydrants, portable fire extinguishers, foam generators, and fireman's outfits.

(8) Operation of remote controls for stopping ventilation and fuel supplies to machinery spaces.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) Each of the industrial personnel without designated responsibility for the survival of others on board, must be instructed in at least—

(1) The location and actuation of fire alarm controls;

(2) The location and proper method of use of firefighting equipment; and

(3) Fire precautions.

(f) Each member of the crew and each of the industrial personnel with designated responsibility for the survival of others on board must be instructed in at least the items covered in paragraph (e) of this section and—

(1) Methods of detection, isolation, control, and extinguishing of fire; and

(2) Checking and maintaining fire fighting equipment.

127. By revising § 109.215 to read as follows:

§ 109.215 Abandonment training and drills.

(a) Unit abandonment training material must be on board each unit. The training material must consist either of a manual of one or more volumes, or audio-visual training aids, or both.

(1) The training material must contain instructions and information on the lifesaving appliances on the unit and on the best methods of survival. A training manual must be written in easily understood terms, illustrated wherever possible.

(2) If a training manual is used, a copy must be made available to each person on board the unit. If audio-visual training aids are used they must be incorporated in the onboard training sessions under paragraph (d) of this section.

(3) The training material must explain the following in detail:

(i) Donning of the lifejackets and immersion suits carried on board.

(ii) Muster at the assigned stations.

(iii) Boarding, launching, and clearing the survival craft and rescue boat.

(iv) Method of launching from within the survival craft.

(v) Release from launching appliances.

(vi) Method and use of devices for protection in launching areas, where appropriate.

(vii) Illumination in launching areas.

(viii) Use of all survival equipment.

(ix) Use of all detection equipment.

(x) With illustrations, the use of radio lifesaving appliances.

(xi) Use of sea anchors.

(xii) Use of engine and accessories.

(xiii) Recovery of survival craft and rescue boat including stowage and securing.

(xiv) Hazards of exposure and the need for warm clothing.

(xv) Best use of the survival craft for survival.

(xvi) Methods of retrieval, including the use of helicopter rescue gear (slings, baskets, stretchers), breeches-buoy and shore lifesaving apparatus and unit's line-throwing apparatus.

(xvii) All other functions contained in the muster list and emergency instructions.

(xviii) Instructions for emergency repair of the lifesaving appliances.

(b) An abandonment drill must be conducted on each unit in alternating weeks. If a drill cannot be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(1) Any member of the crew or any of the industrial personnel excused from an abandonment drill must participate in the next drill, so that each person participates in at least one abandonment drill each month. A drill must take place within 24 hours of a change in crew or industrial personnel if more than 25% of the persons on board have not participated in an abandonment drill on board the unit in the previous month.

(2) Each abandonment drill must include:

(i) Summoning of crew and industrial personnel to muster stations with the general alarm and making sure that they are made aware of how the order to abandon the unit is given, as specified in the station bill.

(ii) Simulation of an abandonment emergency which varies from drill to drill.

(iii) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular abandonment emergency being simulated.

(iv) Checking to see that crew members and industrial personnel are suitably dressed.

(v) Checking to see that lifejackets are correctly donned.

(vi) Lowering of at least one lifeboat after any necessary preparation for launching. The lifeboat must be lowered at least to the extent where the davit head has completed its travel and the fall wire has begun to pay out.

(vii) Starting and operating the lifeboat engine.

(viii) Operation of davits used for launching liferafts.

(4) Different lifeboats must, as far as practicable, be lowered to meet paragraph (b)(4)(v) of this section at successive drills.

(5) Each abandonment drill must, as far as practicable, be conducted as if there were an actual emergency.

(6) Each lifeboat must be launched with its assigned operating crew aboard and maneuvered in the water at least once every 3 months during an abandonment drill.

(7) Each rescue boat that is not also a lifeboat must be launched with its assigned crew aboard and maneuvered in the water—

(i) Once each month, if reasonable and practicable; but

(ii) At least once every 3 months.

(8) At least one drill every 3 months must be held at night, unless the master or person in charge determines it is unsafe.

(9) Emergency lighting for mustering and abandonment must be tested at each abandonment drill.

(c) The master or person in charge of a unit carrying immersion suits shall make sure that—

(1) Each member of the crew and industrial personnel either—

(i) Wears an immersion suit in at least one abandonment drill per month unless is is impracticable due to warm weather; or

(ii) Participates in at least one immersion suit drill per month that includes donning an immersion suit and being instructed in its use.

(d) Each member of the crew and industrial personnel on board the unit must be given training in the use of lifesaving appliances and the duties assigned in the station bill.

(1) Except as provided under paragraph (d)(2) of this section, onboard training in the use of the unit's lifesaving appliances, including survival craft equipment, must be given to each member of the crew and industrial personnel as soon as possible, but not later than 2 weeks after they join the unit.

(2) If the crew or industrial personnel are on a regularly scheduled rotating assignment to a unit, onboard training in the use of the unit's lifesaving appliances, including survival craft equipment, must be given to each member of the crew and industrial personnel not later than 2 weeks after the time the person first joins the unit.

(3) The crew and the industrial personnel must be instructed in the use of the unit's lifesaving appliances and in survival at sea on alternating weeks, normally in the weeks when abandonment drills are not held. If individual instruction sessions cover different parts of the unit's lifesaving system, all the unit's lifesaving equipment and appliances must be covered within each 2 month period.

(i) Each of the industrial personnel without designated responsibility for the survival of others on board, must be instructed in at least—

(A) The emergencies which might occur on that particular type of unit;

(B) The consequences of panic;

(C) The types of all lifesaving appliances carried on the unit and proper methods of using them, including—

(*1*) The correct method of donning and wearing a lifejacket, and if provided, an immersion suit;

(*2*) Jumping into the water from a height while wearing a lifejacket and, if provided, an immersion suit;

(*3*) How to board survival craft from the unit and from the water;

(*4*) Operation and use of the unit's inflatable liferafts;

(*5*) Special instructions necessary for use of the unit's lifesaving appliances in severe weather and severe sea conditions;

(*6*) Swimming while wearing a lifejacket; and

(*7*) Keeping afloat without a lifejacket;

(D) Where appropriate, how to survive in the water—

(1) In the presence of fire or oil on the water;

(2) In cold conditions; and

(3) If sharks may be present;

(E) Problems of hypothermia, first-aid treatment for hypothermia and other appropriate first-aid procedures; and

(F) The need to adhere to the principles of survival; and

(G) The basic methods of boarding helicopters.

(ii) Each member of the crew and each of the industrial personnel with designated responsibility for the survival of others on board, must be instructed in at least the items covered in paragraph (d)(3)(i) of this section, and—

(A) Marshalling of personnel;

(B) Abandonment of the unit, including—

(1) Launching survival craft;

(2) Getting survival craft quickly and safely clear of the unit; and

(3) Righting a capsized survival craft;

(C) Handling all survival craft and their equipment, including—

(1) Checking and maintaining their readiness for immediate use;

(2) Using equipment to the best advantage;

(3) Using the sea anchor;

(4) Remaining, as far as practicable, in the general vicinity of the unit, well clear of but not downwind of any hydrocarbons or fire;

(5) Recovering and, as far as practicable, caring for other survivors;

(6) Keeping a look-out;

(7) Operating available means of detection by others, including radio distress alerting and radio emergency procedures; and

(8) Making proper use of food and drinking water and using protective measures in survival craft such as those for preventing exposure to cold, sun, wind, rain, and sea, and for preventing seasickness;

(D) Cautioning on the preservation of body fluids and the dangers of drinking seawater;

(E) Transferring personnel from survival craft to helicopters or to work boats;

(F) Maintaining morale; and

(G) Methods of helicopter rescue.

(4) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on each unit with davit-launched liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special liferaft intended for training purposes only, and not part of the unit's lifesaving equipment, it must be conspicuously marked.

§ 109.217 [Removed]

128. By removing § 109.217.

§ 109.219 [Removed]

129. By removing § 109.219.

§ 109.221 [Removed]

130. By removing § 109.221.

§ 109.225 [Removed]

131. By removing § 109.225.

Subpart C—Operation and Stowage of Safety Equipment

132. By revising § 109.301 to read as follows:

§ 109.301 Operational readiness.

(a) Except as provided in § 109.303(e), each item of firefighting equipment, each lifesaving appliance and each item of survival craft and rescue boat equipment must be in good working order and ready for immediate use at all times when the unit is in operation.

(b) Each deck where lifeboats and liferafts are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the lifesaving appliances.

133. By adding a new § 109.303 to read as follows:

§ 109.303 Maintenance of lifesaving appliances.

(a) The manufacturer's instructions for onboard maintenance of lifesaving appliances must be onboard and must include the following for each appliance—

(1) Checklists for use when carrying out the inspections required under § 109.311(a);

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The master or person in charge shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) For lifesaving appliances constructed on or before July 1, 1986, paragraph (a) of this section need only be complied with to the extent that the manufacturer's instructions are available.

(d) The OCMI may accept, instead of the instructions required under paragraph (a) of this section, an onboard planned maintenance program that includes the items listed in that paragraph.

(e) If lifeboats, rescue boats, and rigid liferafts are maintained and repaired while the unit is in operation, there must be a sufficient number of lifeboats and liferafts available for use in at least two separate locations to accommodate all persons on board.

(f) Except in an emergency, extensive repairs or alterations must not be made to any lifesaving appliance without advance notification of the OCMI. Insofar as possible, each repair or alteration must be made in accordance with the requirements for the lifesaving appliance in Subchapter Q of this chapter. The OCMI may require each lifesaving appliance that has been altered or extensively repaired to be subjected to each test for the appliance in Subchapter Q of this chapter that is affected by the repair or alteration.

(g) The master or person in charge shall report each emergency repair or alteration to a lifesaving appliance as soon as practicable to the OCMI responsible for the area where the unit is operating.

(h) A lifeboat or rigid liferaft must not be repaired or reconditioned for use on a unit other than the one it was originally built for, unless specifically permitted by the OCMI. If required by the OCMI, the repair or reconditioning of the lifeboat or rigid liferaft must be made under the OCMI's supervision.

134. By revising § 109.305 to read as follows:

§ 109.305 Maintenance of falls.

(a) Except as provided under paragraph (d) of this section, each fall used in a launching appliance must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is the earlier.

(c) Each fall must have a corrosion-resistant tag with the following permanently marked on it:

(1) The date the new fall was installed.

(2) If the fall has been turned end for end, the date it was turned.

(d) A fall which can not be turned end for end must be carefully inspected between 24 and 30 months after its installation. If the inspection shows that the fall is faultless, the fall may be continued in service up to 48 months after its installation, when it must be replaced.

135. By revising § 109.307 to read as follows:

§ 109.307 Spare parts and repair equipment for lifesaving appliances.

Spare parts and repair equipment must be on board the unit for each lifesaving appliance and component subject to excessive wear or consumption and that needs to be replaced regularly.

136. By adding a new § 109.309 to read as follows:

§ 109.309 Weekly inspection of lifesaving appliances.

The following tests and inspections must be carried out weekly:

(a) Each survival craft, rescue boat and launching appliance must be visually inspected to ensure its readiness for use.

(b) Each lifeboat engine and rescue boat engine must be run ahead and astern for not less than 3 min., unless the ambient temperature is below the minimum temperature required for starting the engine.

(c) The general alarm system must be tested.

(d) Each battery for lifeboat and rescue boat engine starting, searchlights, fixed lifeboat radio installations, and portable radio apparatus must be brought up to full charge at least once each week if—

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

(e) The transmitter of each portable radio apparatus must be tested at least once each week using a dummy antenna load.

137. By adding a new § 109.311 to read as follows:

§ 109.311 Monthly inspections of lifesaving appliances.

(a) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly using the checklist required under § 109.303(a)(1) to make sure it is complete and in good order. A report of the inspection, including a statement as to the condition of the equipment, must be recorded in the unit's official logbook.

(b) Each EPIRB and each SART other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and output indicator to determine that it is operative.

138. By revising § 109.313 to read as follows:

§ 109.313 Quarterly inspections of lifesaving appliances.

(a) Each lifeboat winch control apparatus, including motor controllers, emergency switches, master switches, and limit switches must be examined once each three months.

(b) The examination must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

(c) The date of the examination required under this section and the condition of the equipment must be noted in the official logbook.

§ 109.314 [Removed]

139. By removing § 109.314.

140. By adding a new § 109.315 to read as follows:

§ 109.315 Annual inspection and repair of lifesaving appliances.

(a) Each lifeboat, rescue boat and rigid liferaft must be stripped, cleaned, and thoroughly inspected and repaired as needed at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired as needed once each year.

(c) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of survival equipment and clearly marked with a date identified as an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(e) Except for a storage battery used in a lifeboat or rescue boat, each battery without an expiration date used in an item of survival equipment must be replaced during the annual inspection and repair.

(f) The requirements in this section do not relieve the master or person in charge of the requirement under § 109.301(a) to keep the equipment ready for immediate use.

141. By revising § 109.317 to read as follows:

§ 109.317 Servicing of inflatable liferafts, inflatable lifejackets and inflated rescue boats.

(a) Each inflatable liferaft, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced—

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the unit, provided that the delay does not exceed 5 months.

(b) Each inflatable liferaft must be serviced—

(1) Whenever the container of the raft is damaged, or the straps or seal broken; and

(2) In accordance with the servicing procedure under Subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under Subpart 160.076 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under Subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant (G–MVI), except for emergency repairs carried out on board the vessel.

142. By adding a new § 109.319 to read as follows:

§ 109.319 Periodic servicing of hydrostatic release units.

(a) Each hydrostatic release unit must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the unit, provided that the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under Subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic release unit must be renewed when the unit is serviced and tested.

§ 109.320 [Removed]

143. By removing § 109.320.

§ 109.321 [Removed]

144. By removing § 109.321.

145. By revising § 109.323 to read as follows:

§ 109.323 Manning of survival craft and supervision.

(a) A merchant mariner's document endorsement as a lifeboatman or another inclusive rating under Part 12 of this Title is evidence of training in survival craft and serves as a certificate of proficiency. For the purposes of this section, a "certificated person" is a person holding a merchant mariner's document with such an endorsement.

(b) There must be a sufficient number of trained persons on board for mustering and assisting untrained persons.

(c) There must be a sufficient number of deck officers, able seamen, or certificated persons on board to operate the survival craft and launching arrangements required for abandonment by the total number of persons permitted on board.

(d) One person must be placed in charge of each survival craft to be used.

(1) The person in command must be a deck officer, able seaman, or certificated person.

(2) A deck officer, able seaman, or certificated person must be designated second-in-command for each lifeboat permitted to carry more than 40 persons.

(e) The person in charge of each survival craft shall have a list of the survival craft crew and shall see that the crewmembers are acquainted with their duties. The second-in-command of a lifeboat shall also have a list of the lifeboat crew.

(f) Each motorized survival craft must have a person assigned who is capable of operating the engine and carrying out minor adjustments.

(g) The master or person in charge shall make sure the persons required under paragraphs (b), (c), and (d) of this section are equitably distributed among the unit's survival craft.

§ 109.325 [Removed]

146. By removing § 109.325.

§ 109.341 [Removed]

147. By removing § 109.341.

148. By revising § 109.425 to read as follows:

§ 109.425 Repairs and alterations: fire detecting and extinguishing equipment.

(a) Before making repairs or alterations, except emergency repairs or alterations to fire detecting and extinguishing equipment, the master or person in charge shall report the nature of the repairs or alterations to the Officer in Charge, Marine Inspection.

(b) When emergency repairs or alterations to fire detecting or fire extinguishing equipment have been made, the master or person in charge shall report the nature of the repairs or alterations to the Officer in Charge, Marine Inspection.

149. By revising paragraphs (d) and (e) of § 109.433 to read as follows:

§ 109.433 Logbook Entries.

* * * * *

(d) The date when fire drills are held, and details of fire fighting training and fire drills. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill or training session.

(3) Number and lengths of hose used.

(4) Subject of training session.

(5) Statement as to the condition of the equipment used.

(6) If a full drill or training session is not held at the appointed time, the circumstances and the extent of the drill or training session held.

(e) The date when musters are held, details of abandonment drills, drills of other lifesaving appliances and onboard training. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill or training session.

(3) Identification of survival craft used in drills.

(4) Subject of training session.

(5) Statement as to the condition of the equipment used.

(6) If a full muster, drill or training session is not held at the appointed time, the circumstances and the extent of the muster, drill or training session held.

* * * * *

By revising the title of Subpart E to read as follows:

Subpart E—Emergency Signals

§ 109.501 [Removed]

150. By removing § 109.501.

151. By removing and reserving paragraph (a), by revising the section heading, and by revising paragraph (c)(2) of § 109.503 to read as follows:

§ 109.503 Emergency signals.

(a) [reserved]

* * * * *

(c) * * *

(2) If whistle signals are used to direct the handling of lifeboats and davit-launched liferafts, they must be—

(i) One short blast to lower the lifeboats and davit-launched liferafts; and

(ii) Two short blasts to stop lowering the lifeboats and davit-launched liferafts.

* * * * *

§ 109.505 [Removed]

152. By removing § 109.505.

SUBCHAPTER J—ELECTRICAL ENGINEERING

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

153. The authority citation for Part 112 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306, 3703, 4104; 49 CFR 1.46.

Subpart 112.15—Emergency Loads

154. By revising paragraphs (c) and (g) of § 112.15–1 to read as follows:

§ 112.15–1 Temporary emergency loads.

* * * * *

(c) Lighting for passageways, stairways, and escape trunks in passenger quarters, crew quarters, public spaces, machinery spaces, and work spaces sufficient to allow passengers and crew to find their way to open decks and to survival craft muster stations and embarkation stations with all watertight doors and fire-screen doors closed.

* * * * *

(g) Lighting for survival craft launching, including muster stations, embarkation stations, the survival craft, its launching appliance, and the area of the water where it is to be launched. Lights must meet § 111.75–16 and 112.43–11.

* * * * *

155. By adding a new paragraph (u) to § 112.15–5 to read as follows:

§ 112.15–5 Final emergency loads.

* * * * *

(u) Each stabilizer wing and indicator that must be movable to prevent damage to survival craft.

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUIFIED GASES

156. The authority citation for Part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277; 49 CFR 1.46.

§ 154.1445 [Removed]

157. By removing § 154.1445

SUBCHAPTER Q—EQUIPMENT, CONSTRUCTION, AND MATERIALS: SPECIFICATIONS AND APPROVAL

PART 160—LIFESAVING EQUIPMENT

158. The authority citation for Part 160 is revised to read as follows and all other authority citations in Part 160 are removed:

Authority: 46 U.S.C. 3306, 3703, 4102, 4302; 49 CFR 1.46.

Subpart 160.040—Line-Throwing Appliance; Impulse-Projected Rocket Type (and Equipment)

159. By revising § 160.040–6 to read as follows:

§ 160.040–6 Marking and labeling.

(a) Each line throwing appliance must be permanently and legibly marked with the—

(1) Model designation;

(2) Serial number;

(3) Coast Guard approval number; and

(4) Name of the manufacturer.

(b) Each projectile must be permanently and legibly marked with the—

(1) Model designation;

(2) Coast Guard approval number;

(3) Name of the manufacturer;

(4) Month and year manufactured; and

(5) Expiration date that must not be more than 48 months after the date of manufacture.

(c) Each primer-ejector cartridge must be permanently and legibly marked with the—

(1) Model designation;

(2) Coast Guard approval number;

(3) Name of the manufacturer;

(4) Month and year manufactured; and

(5) Expiration date that must not be more than 48 months after the date of manufacture.

(d) Each container of new service line must be permanently and legibly marked with—

(1) The name of the manufacturer;

(2) The month and year manufactured; and

(3) A statement to the effect that in all respects the line meets the applicable requirements of this subpart.

(e) Each faking box and reel must bear the name of the manufacturer.

§§ 160.042–1 through 160.142–5 [Removed]

160. By removing Subpart 160.042 (consisting of §§ 160.042–1 through 160.142–5).

PART 161—ELECTRICAL EQUIPMENT

161. The authority citation for Part 161 is revised to read as follows and all other authority citations in Part 161 are removed:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

§§ 161.006–1 through 161.006–6 [Removed]

161a. By removing Subpart 161.006 (consisting of§§ 161.006–1 through 161.006–6).

SUBCHAPTER R—NAUTICAL SCHOOLS

161b. The following Table of Contents for Part 167 reflects revised Subpart 167.35 to read as follows:

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

Subpart 167.35—Lifesaving Appliances and Arrangements

Sec.

167.35–1 General.
167.35–5 Emergency signals.
167.35–10 Manning of survival craft and supervision.
167.35–90 Operational readiness, maintenance and inspection of lifesaving equipment.

* * * * *

162. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306, 6101; 49 CFR 1.46.

Subpart 167.15—Inspections

163. By adding a new § 167.15–27 to read as follows:

§ 167.15–28 Inspection of lifesaving appliances and arrangements.

(a) At each initial inspection, one of the following must be done in the presence of a marine inspector:

(1) The tests and inspections under § 71.20–20(a)(1) of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements.

(2) The tests and inspections under § 91.20–20(a)(1) of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(b) At each inspection for certification, one of the following must be done in the presence of a marine inspector:

(1) The tests and inspections under § 71.25–15 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements.

(2) The tests and inspections under § 91.25–15 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

164. By revising Subpart 167.35 to read as follows:

Subpart 167.35—Lifesaving Appliances and Arrangements

§ 167.35–1 General.

Lifesaving appliances and arrangements on public nautical school ships must meet the requirements for nautical school ships in Subchapter W of this chapter.

§ 167.35–5 Emergency signals.

The various signals used to call the crew to their stations and to give instructions to the crew must be listed on the station bill required under § 199.80 of this chapter. The signals must meet—

(a) Section 78.13–1 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(b) Section 97.13–1 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

§ 167.35–10 Manning of survival craft and supervision.

The manning of survival craft and their supervision must meet—

(a) Subpart 78.14 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(b) Subpart 97.14 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

§ 167.35–90 Operational readiness, maintenance and inspection of lifesaving equipment.

The operational readiness, maintenance, and inspection of lifesaving equipment must be as required under—

(a) Subpart 78.95 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(b) Subpart 97.90 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

Subpart 167.55—Special Markings Required

165. By revising paragraph (j) and adding paragraphs (k), (l), (m), (n), and (o) of § 167.55–5 to read as follows:

§ 167.55–5 Marking of fire and emergency equipment, etc.

* * * * *

(j) *Lifeboats and rescue boats.* Each lifeboat and rescue boat must be marked as required under—

(1) Section 78.47–60 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.37–37 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(k) *Rigid liferafts.* Each rigid liferaft must be marked as required under—

(1) Section 78.47–62 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.37–39 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(l) *Inflatable liferafts.* Markings for each inflatable liferaft must be as required under—

(1) Section 78.47–63 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.37–40 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(m) *Life floats and buoyant apparatus.* Each life float and buoyant apparatus must be marked as required under—

(1) Section 78.47–64 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.37–42 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(n) *Lifejackets, immersion suits, and ring life buoys.* Each lifejacket, immersion suit, and ring life buoy must be marked as required under—

(1) Section 78.47–65 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.37–43 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(o) *EPIRBs and SARTs.* Each EPIRB and each SART must be marked as required under—

(1) Section 78.47–72 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.37–55 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

Subpart 167.65—Special Operating Requirements

166. By revising § 167.65–1 to read as follows:

§ 167.65–1 Abandon-ship training and drills.

(a) Abandon-ship training and drills must be conducted as required under—

(1) Section 78.17–50 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.15–35 of this chapter for each public nautical school ship provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(b) Wherever the term "passenger" is used in § 78.17–50 or § 97.15–35 of this chapter, it shall be interpreted as meaning a—

(1) Student;

(2) Cadet; and

(3) Instructor who is not also a member of the crew.

167. By adding a new § 167.65–2 to read as follows:

§ 167.65–2 Fire drills.

(a) A fire drill must be conducted on each vessel in alternating weeks. The fire drill must not be conducted as part of the abandon-ship drill, nor immediately prior to or after the abandon-ship drill. If a fire drill can not be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(b) Any member of the crew excused from a fire drill must participate in the next drill, so that each member participates in at least one fire drill each month. If more than 25% of the crew have not participated in a fire drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G–MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(c) Each fire drill must include:

(1) Summoning of the crew and other persons on board to their stations with the general alarm.

(2) Simulation of a fire emergency which varies from drill to drill.

(3) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is in proper working order.

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency equipment lockers, and demonstrating the use of each item by the person or persons designated to use it.

(6) Operating each watertight door used while the vessel is underway.

(7) Operation of each self-closing fire door.

(8) Closing all fire doors and doors in fire boundaries.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The date when fire drills are held, and details of fire drills must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill.

(3) Number and lengths of hose used.

(4) Statement as to the condition of the equipment used.

(5) If a full drill is not held at the appointed time, the circumstances and the extent of the drill held.

§ 167.65–55 [Removed]

168. By removing § 167.65–55.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

169. The authority citation for Part 168 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart 168.05—General Requirements

170. By revising § 168.05–5 to read as follows:

§ 168.05–5 Application of passenger vessel inspection regulations.

Except for requirements covered specifically by this part, all of the following regulations applying to passenger vessels apply to each vessel and item of floating equipment used by or in connection with a civilian nautical school:

(a) For vessels 100 gross tons and over, Subchapter H (Passenger Vessels) of this chapter, and all other regulations in this chapter applicable to passenger vessels 100 gross tons and over.

(b) For vessels less than 100 gross tons, Subchapter T (Small Passenger Vessels) of this chapter, and all other regulations in this chapter applicable to passenger vessels less than 100 gross tons.

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 188—GENERAL PROVISIONS

171. The authority citation for Part 188 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

172–173. By adding a new Subpart 188.27 to read as follows:

Subpart 188.27—Lifesaving Appliances and Arrangements.

§ 188.27–1 General.

Lifesaving appliances and arrangements on oceanographic research vessels must meet the requirements for special purpose ships in Subchapter W of this chapter.

PART 189—INSPECTION AND CERTIFICATION

174. The authority citation for Part 189 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart 189.20—Initial Inspection

175. By revising paragraph (a)(1) of § 189.20–20 to read as follows:

§ 189.20–20 Specific tests and inspections.

(a) * * *

(1) The tests and inspections under § 71.20–20(a)(1) of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or the tests and inspections under § 91.20–20(a)(1) of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

* * * * *

Subpart 189.25—Inspection for Certification

176. By revising § 189.25–15 to read as follows:

§ 189.25–15 Lifesaving equipment.

At each inspection for certification, one of the following must be done in the presence of a marine inspector:

(a) The tests and inspections under § 71.25–15 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting passenger vessel requirements.

(b) The tests and inspections under § 91.25–15 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

PART 192—LIFESAVING EQUIPMENT

177. By removing and reserving Part 192.

177a. The following Table of Contents for Part 196 reflects new or revised subparts to read as follows:

PART 196—OPERATIONS

Subpart 196.00—Incorporation by Reference

Sec.
196.00–1 Incorporation by reference.
* * * * *

Subpart 196.13—Emergency Signals

196.13–1 Emergency Signals.

Subpart 196.14—Manning of Survival Craft and Supervision

196.14–1 General.

Subpart 196.90—Operational Readiness, Maintenance and inspection of Lifesaving Equipment

196.90–20 Operational readiness.

Subpart 196.95—Pilot Boarding Operations

* * * * *

178. The authority citation for Part 196 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

179. By adding Subpart 196.00 to read as follows:

Subpart 196.00—Incorporation by Reference

§ 196.00–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England

Resolution [LSR 19/WP.4, Annex 3], "Guidelines Concerning the Use and Fitting of Retroreflective Materials on Life-saving Appliances", June 1987—196.37–37; 196.37–43

180. By revising Subpart 196.13 to read as follows:

Subpart 196.13—Emergency Signals

§ 196.13–1 Emergency signals.

The various signals used to call the crew to their stations and to give instructions to the crew must be listed on the station bill required under § 199.80 of this chapter. The signals must meet—

(a) Section 78.13–1 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(b) Section 97.13–1 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

181. By revising Subpart 196.14 to read as follows:

Subpart 196.14—Manning of Survival Craft and Supervision

§ 196.14–1 General.

The manning of survival craft and their supervision must meet—

(a) Subpart 78.14 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(b) Subpart 97.14 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

Subpart 196.15—Tests, Drills, and Inspections

§ 196.15–25 [Amended]

182. By removing § 196.15–25(a)(3).

183. By revising § 196.15–35 to read as follows:

§ 196.15–35 Abandon-ship training and drills.

(a) Abandon-ship training and drills must be conducted as required under—

(1) Section 78.17–50 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(2) Section 97.15–35 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

(b) Wherever the term "passenger" is used in § 78.17–50 or § 97.15–35 of this chapter, it shall be interpreted as meaning one of the scientific personnel on an oceanographic research vessel for the purposes of this section.

§ 196.15-37 [Removed]

184. By removing § 196.15–37.

185. By revising § 196.15–40 to read as follows:

§ 196.15-40 Fire drills.

(a) A fire drill must be conducted on each vessel in alternating weeks. The fire drill must not be conducted as part of the abandon-ship drill, nor immediately prior to or after the abandon-ship drill. If a fire drill cannot be held during the appointed week due to bad weather or other unavoidable reason, the drill must be conducted at the first opportunity following the time when the drill would normally have been held.

(b) Any member of the crew excused from a fire drill must participate in the next drill, so that each member participates in at least one fire drill each month. If more than 25% of the crew have not participated in a fire drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port if reasonable and practicable, but not later than 24 hours after the vessel leaves port. The Commandant (G–MVI) may accept other arrangements that are at least equivalent for those vessels where this is impractical.

(c) Each fire drill must include:

(1) Summoning of scientific personnel and crew to their stations with the general alarm.

(2) Simulation of a fire emergency which varies from drill to drill.

(3) Reporting to stations, preparing for, and demonstrating the duties assigned under the procedure described in the station bill for the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is in proper working order.

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency equipment lockers, and demonstrating the use of each item by the person or persons designated to use it.

(6) Operating each watertight door used while the vessel is underway.

(7) Operation of each self-closing fire door.

(8) Closing all fire doors and doors in fire boundaries.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The date when fire drills are held, and details of fire drills must be recorded in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) The time and date.

(2) Length of drill.

(3) Number and lengths of hose used.

(4) Statement as to the condition of the equipment used.

(5) If a full drill is not held at the appointed time, the circumstances and the extent of the drill held.

§ 196.15-45 [Removed]

186. By removing § 196.15–45.

§ 196.15-50 [Removed]

187. By removing § 196.15–50.

§ 196.15-65 [Removed]

188. By removing § 196.15–65.

§ 196.15-70 [Removed]

189. By removing § 196.15–70.

190. By revising paragraphs (a)(1) and (a)(6) of § 196.35–5 to read as follows:

§ 196.35-5 Actions required to be logged.

(a) * * *

(1) Abandon-ship training and drills, and fire drills. As held. See §§ 196.15–35 and 196.15–40.

* * * * *

(6) Survival craft winches. Once in each three months. See § 196.90–73.

* * * * *

Subpart 196.37—Markings for Fire and Emergency Equipment, etc.

191. By revising § 196.37–37 to read as follows:

§ 196.37-37 Lifeboats and rescue boats.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the boat. The boats on each side of the vessel must be numbered from forward to aft. If there are boats on both sides of the vessel, the odd numbers must be on the starboard side.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 35 mm (1.5 in.) high:

(1) The length and beam of the boat.

(2) The number of persons capacity of the boat. This number must—

(i) Be the number of persons the lifeboat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat in at least two places visible from above the boat in letters and numbers not less than 75 mm (3 in.) high:

(1) The number of persons capacity of the boat.

(2) The name of the vessel.

(d) The name of the vessel must be plainly marked or painted on each oar and paddle.

(e) On or before July 1, 1991, each lifeboat and rescue boat must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

192. By adding a new § 196.37–39 to read as follows:

§ 196.37-39 Rigid liferafts.

(a) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 75 mm (3 in.) high:

(1) The name of the vessel.

(2) The number of the liferaft. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats.

(3) For vessels in ocean service, the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted near one entrance of each rigid liferaft in letters and numbers at least 35 mm (1.5 in.) high:

(1) Either "SOLAS A Pack" or "SOLAS B Pack" depending upon its equipment under § 199.143(b) or § 199.143(c) of this chapter.

(2) The length of the painter.

(c) The number of persons capacity must be plainly marked or painted over each entrance to each rigid liferaft in letters and numbers at least 100 mm (4 in.) high, in a color contrasting to that of the liferaft. This number must—

(1) Be the number of persons the liferaft is equipped for; and

(2) Not be greater than the number of persons the liferaft is approved for, as shown on its nameplate.

(d) The name of the vessel must be plainly marked or painted on each paddle.

193. By revising § 196.37–40 to read as follows:

§ 196.37-40 Inflatable liferafts.

The number of the liferaft and the number of persons it is permitted to accommodate must be marked or painted in a conspicuous place in the immediate vicinity of each inflatable liferaft in letters and numbers at least 35

mm (1.5 in.) high. Liferafts stowed on the sides of the vessel must be numbered in the same manner as the lifeboats. This marking must not be on the inflatable liferaft container.

194. By adding a new § 196.37–42 to read as follows:

§ 196.37–42 Life floats and buoyant apparatus.

(a) The name of the vessel must be plainly marked or painted on each life float and buoyant apparatus, together with their oars and paddles.

(b) The number of persons capacity must be plainly marked or painted on each life float and buoyant apparatus in letters and numbers at least 35 mm (1.5 in.) high. This number must—

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for, as shown on its nameplate.

195. By revising § 196.37–43 to read as follows:

§ 196.37–43 Lifejackets, immersion suits, and ring life buoys.

(a) Each lifejacket, immersion suit, and ring life buoy must be marked in block capital letters with the vessel's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 50 mm (2 in.) high with the number and identification of the items stowed inside and their size.

(c) Each ring life buoy on a vessel in ocean service must be marked in block capital letters with the name of the port required to be marked on the stern of the vessel under Subpart 67.13 of this chapter.

(d) Each stowage position for a ring life buoy must be marked "LIFE BUOY".

(e) Each lifejacket must be marked with Type I retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

(f) On or before July 1, 1991, each ring life buoy must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution [LSR 19/WP.4, Annex 3].

Note: Each approved immersion suit is provided with retroreflective material by the manufacturer of the suit.

196. By revising § 196.37–49 to read as follows:

§ 196.37–49 EPIRBs and SARTs.

The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except for an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

§ 196.39–1 [Removed]

197. By removing Subpart 196.39 (consisting of § 196.39–1).

198. By revising Subpart 196.90 to read as follows:

Subpart 196.90—Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

§ 196.90–20 Operational readiness.

The operational readiness, maintenance, and inspection of lifesaving equipment must be as required under—

(a) Subpart 78.95 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting passenger vessel requirements, or

(b) Subpart 97.90 of this chapter for each oceanographic research vessel provided with lifesaving appliances and arrangements meeting cargo and miscellaneous vessel requirements.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

Dated: September 8, 1988.

Editorial Note: This document was received by the Office of the **Federal Register**, April 5, 1989.

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April 21, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

Cumulative List of Orphan-Drug and Biological Designations; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan-Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) previously announced the availability of a list, which is brought up-to-date quarterly, identifying the drugs and biologicals granted orphan-drug designation pursuant to section 526 of the Federal Food, Drug, and Cosmetic Act (54 FR 7100; February 16, 1989). The printing and format errors which occurred in the list could not adequately be amended by a correction notice. Therefore, by this notice, FDA is announcing a revised publication of the notice of availability of the cumulative list of designated orphan drugs and biological products as of December 31, 1988. This notice supersedes the notice of February 16, 1989.

ADDRESS: Copies of the revised publication of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Aleta M. Sindelar, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biological products. This list is made current on a quarterly basis and is available upon request from FDA's Dockets Management Branch (address above). Those requesting a copy of the list should specify the docket number found in brackets in the heading of this document. At the end of each calendar year, the agency intends to publish in the **Federal Register** an up-to-date cumulative list of designated orphan drugs and biological products including the names of designated compounds, the specific disease/condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1987 was published in the **Federal Register** of January 29, 1988 (53 FR 2680).

The list that is the subject of this notice consists of designated orphan drugs and biological products through December 31, 1988, and, therefore, brings the January 29, 1988, publication up to date. This list was initially printed in the **Federal Register** notice of February 16, 1989 (54 FR 7100). However, typographical errors as well as format revisions in the list occurred at the time of publication. These errors could not adequately be amended by a correction notice. This revised publication of designated orphan drugs through December 31, 1988, will supersede the February 16, 1989, notice.

The orphan-drug designation of a drug or biological product applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological product must apply for orphan-drug designation to obtain exclusive marketing rights. Any request for designation is required to be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577; November 23, 1988.) Copies of the interim guidelines for use in preparing an application for orphan-drug designation may be obtained from the Office of Orphan Products Development (HF-35) (contact identified above).

The names used in this notice for the drug and biological products that have not been approved/licensed for marketing may not be the established/proper names approved by FDA for these products if they are eventually approved/licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: March 15, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988

[Approved for Marketings*]

[Exclusive Approval**]

Biological Designations

Name of biological	Designated use	Sponsor's name and address
Generic—alpha-1-anti-trypsin (recombinant DNA origin). *Trade*—Not established	Supplementation therapy for alpha-1 antitrypsin deficiency in the ZZ phenotype population.	Cooper Biomedical, 3145 Porter Drive, Palo Alto, CA 94304.
Generic—alpha-1-proteinase inhibitor (Alpha-1 PI). *Trade*—Prolastin */**	Replacement therapy in the Alpha 1 PI congenital deficiency state.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701
Generic—anti-J5mAb *Trade*—Not established	Treatment of patients with gram-negative bacteremia which has progressed to endotoxin shock.	Centocor, Inc., 244 Great Valley, Malvern, PA 19355.
Generic—antimelanoma antibody XMMME-01-RTA. *Trade*—Same as generic	Treatment of Stage III melanoma not amenable to surgical resection.	XOMA Corporation, 3516 Sacramento St., San Francisco, CA 94118.
Generic—anti-TAP-72 immunotoxin *Trade*—XOMAZYME-791	Treatment of metastatic colorectal adenocarcinoma.	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval**]

Biological Designations

Name of biological	Designated use	Sponsor's name and address
Generic—antithrombin III(AT-III) *Trade*—Not established	Replacement therapy in congenital deficiency of AT-III for prevention and treatment of thrombosis and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—antithrombin III concentrate I.V. *Trade*—Kybernin	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT-III deficiency.	Hoeschst-Roussell, Route 202-206 North, Somerville, NJ 08876.
Generic—antithrombin III (human) *Trade*—Antithrombin	Hereditary AT-III deficiency	Kabi Vitrum, Inc., 1311 Harbor Bay Pkwy., Alameda, CA 94501
Generic—antithrombin III (human) *Trade*—Antithrombin III (human)	Preventing or arresting episodes of thrombosis in patients with congenital antithrombin III deficiency and/or to prevent the occurrence of thrombosis in patients with antithrombin III deficiency who have undergone trauma or who are about to undergo surgery or parturition.	American National Red Cross, National HDQ, 17th and E St., NW., Washington, DC 20006
Generic—benzylpenicillin, benzylpenicilloic acid, and benzylpenilloic acid. *Trade*—Pre-Pen/MDM	Assessing the risk of administrating penicillin when it is the preferred drug of choice in adult patients who have previously received penicillin and have a history of clinical hypersensitivity.	Kremers-Urban Co., P.O. Box 2038, Milwaukee, WI 53201.
Generic—botulinum A toxin *Trade*—Oculinum	Treatment of strabismus Treatment of blepharospasm	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—botulinum toxin *Trade*—Ortholinum	Treatment of spasmodic torticollis	Alan B. Scott, M.D., 2232 Webster Street, San Francsco, CA 94115.
Generic—CD5-T Lymphocyte Immunotoxin *Trade*—XOMAZYME-H65	For ex-vivo treatment to eliminate mature T cells from potential bone marrow grafts. For in-vivo treatment of bone marrow recipients to prevent graft rejection and graft vs host disease (GVHD). Treatment of graft vs host disease (GVHD) and/or rejection in patients who have received bone marrow transplants.	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.
Generic—cytomegalovirus Immune Globulin (Human). *Trade*—Not established	Prevention or attenuation of primary cytomegalovirus disease in immunosuppressed recipients of organ transplants.	Massachusetts Public Health Biologic Labs, 305 South Street, Jamaica Plain, MA 02130.
Generic—digoxin Immune Fab (Ovine) *Trade*—Digidote	Life-threatening acute cardiac glycoside intoxication manifested conduction disorders, ectopic ventricular activity and (in some cases) hyperkalemia.	Boehringer Mannheim, 1301 Piccard Drive, Rockville, MD 20850.
Generic—digoxin Immune Fab (Ovine) *Trade*—Digibind*/**	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome, 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—erwinia l-asparaginase Trade—Not established	Treatment of acute lymphocytic leukemia (ALL).	Porton Products Ltd., 5445 Balboa Blvd., Suite 115, Encino, CA 91316.
Generic—erwinia l-asparaginase *Trade*—Not established	Treatment of acute lymphocytic leukemia (ALL).	Lypho Med, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—erythropoietin (recombinant-human) *Trade*—Not established	Treatment of anemia associated with end stage renal disease (ESRD).	Amgen, 1900 Oak Terrace La., Thousand Oaks, CA 91320.
Generic—erythropoietin (recombinant-human) *Trade*—Not established	Treatment of anemia associated with end stage renal disease (ESRD).	McDonnell Douglas, P.O. Box 516, St. Louis, MO 63166.
Generic—erythropoietin (recombinant-human) *Trade*—Not established	Treatment of anemia associated with end stage renal disease (ESRD). Treatment of anemia of prematurity in preterm infants.	Ortho Pharmaceutical Corporation, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
Generic—erythropoietin (recombinant-human) *Trade*—EPOCH	Treatment of anemia associated with end stage renal disease (ESRD).	Chugai Pharmaceuticals 1-9, Kyobashi 2-Chome, Chu, Tokyo 104, Japan.
Generic—erythropoietin (recombinant-human) *Trade*—Not established	Treatment of anemia associated with end stage renal disease (ESRD).	Organon Teknika, 800 Capitola Drive, Durham, NC 27713.
Generic—factor VIIa (recombinant, DNA origin) *Trade*—Not established	Treatment of patients with hemophilia A & B with and without antibodies against Factor VIII/IX. Treatment of patients with von Willebrand's disease.	Novo Laboratories, 33 Turner Road, Danbury, CT 06810-5101.
Generic—factor XIII *Trade*—Fibrogammin	Congenital Factor XII deficiency	Hoechst-Roussel Pharmaceuticals, Route 202-206 North, Somerville, NJ 08876.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval**]

Biological Designations

Name of biological	Designated use	Sponsor's name and address
Generic—fibronectin (human plasma derived) *Trade*—Not established	Treatment of non-healing corneal ulcers or epithelial defects which have been unresponsive to conventional therapy and the underlying cause has been eliminated.	The New York Blood Center, Inc. 310 East 67 St., N.Y., N.Y. 10021.
Generic—fibronectin (plasma derived) *Trade*—Not established	Treatment of non-healing corneal ulcers or epithelial defects which have been unresponsive to conventional therapy and for which any infectious cause has been eliminated.	Chiron Ophthalmics, 15A Marconi, Irvine, CA 92718.
Generic—heme arginate *Trade*—Normosang	Treatment of symptomatic stage of acute porphyria.	Huhtamaki Oy Pharmaceuticals, Leiras Medic, P.O. Box 415, SF-20101 Turku, Finland.
Generic—hemin *Trade*—Panhematin*/**	Amelioration of recurrent attacks of acute intermittent porphyria temporarily related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata and hereditary coproporphyria.	Abbott Laboratories, North Chicago, IL 60064.
Generic—Indium In 111 antimelanoma antibody XMMME-0001-DTPA. *Trade*—Same as generic	Diagnostic use in imaging systemic and nodal melanoma metastases.	XOMA Corporation, 3516 Sacramento St., San Francisco, CA 94118.
Generic—interferon alfa-nl *Trade*—Wellferon	Treatment of Acquired Immune Deficiency Syndrome (AIDS)-related Kaposi's Sarcoma. Treatment of Human Papillomavirus (HPV) in patients with severe resistant/recurrent respiratory (laryngeal) papillomatosis.	Burroughs Wellcome, 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—interferon alfa-2a (recombinant) *Trade*—Roferon-A*/**	Treatment of selected patients with Acquired Immune Deficiency Syndrome (AIDS)-related Kaposi's Sarcoma*/**. Treatment of metastatic renal cell carcinoma	Hoffman-LaRoche, 340 Kingsland St., Nutley, NJ 07110.
Generic—interferon alfa-2b (recombinant) *Trade*—Intron A*/**	Treatment of chronic myelogenous leukemia (CML). Treatment of metastatic renal cell carcinoma Treatment of selected patients with AIDS-related Kaposi's Sarcoma*/**. Treatment of ovarian carcinoma Treatment of invasive carcinoma of the cervix Treatment of primary malignant brain tumors Treatment of carcinoma in situ of the urinary bladder. Treatment of human papillomavirus (HPV) in patients with recurrent respiratory (laryngeal) papillomatosis. Treatment of of acute hepatitis B	Schering Corporation, 2000 Galloping Hill Road, Kenilworth, NJ 07033.
Generic—interferon (recombinant human, beta) *Trade*—Betaseron	Treatment of Acquired Immune Deficiency Syndrome (AIDS). Treatment of Multiple Sclerosis (MS)	Triton Biosciences, 1501 Harbor Bay Pkwy., Alameda, CA 94501.
Generic—interferon gamma-lb *Trade*—Not established	Treatment of Chronic Granulomatous Disease (CGD).	Genentech, Inc., 460 Point San Bruno Boulevard, South San Francisco, CA 94080.
Generic—interleukin-2, recombinant *Trade*—Proleukin	Treatment of metastatic renal cell carcinoma	Cetus Corporation, 1400 Fifty-Third St., Emeryville, CA 94608.
Generic—iodine I 123 murine monoclonal antibody to human alpha-fetoprotein. *Trade*—Not established	Detection of hepatocellular carcinoma and hepatoblastoma. Detection of alpha-fetoprotein producing germ cell tumors.	Immunomedics, Inc., 5 Bruce Street, Building #7, Newark, NJ 07013.
Generic—iodine I 123 murine monoclonal antibody to human chorionic gonadotropin (hCG). *Trade*—Not established	Detection of hCG producing tumors such as germ cell and trophoblastic cell tumors.	Immunomedics, Inc., 150 Mt. Bethel Rd., CN4918, Warren, NJ 07060.
Generic—iodine I 131 Lym-1 monoclonal antibody. *Trade*—Not established	Treatment of B-cell lymphoma	Lederle Laboratories, Pearl River, NY 10965.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval**]

Biological Designations

Name of biological	Designated use	Sponsor's name and address
Generic—iodine I 131 murine monoclonal antibody to human alpha-fetoprotein. *Trade*—Not established	Treatment of hepatocellular carcinoma and hepatoblastoma. Treatment of alpha-fetoprotein producing germ cell tumors.	Immunomedics, Inc., 5 Bruce Street, Building #7, Newark, NJ 07013.
Generic—iodine I 131 murine monoclonal antibody to human chorionic gonadotropin (hCG). *Trade*—Not established	Treatment of hCG producing tumors such as germ cell and trophoblastic cell tumors.	Immunomedics, Inc., 150 Mt. Bethel Rd., CN4918, Warren, NJ 07060.
Generic—monoclonal antibodies (murine or human) recognizing B-cell lymphoma idiotypes. *Trade*—Not established	Treatment of B-cell lymphoma	IDEC, Inc., 291 North Bernardo Ave., Mountain View, CA 94043.
Generic—monoclonal antibody 17-1A *Trade*—Panorex	Treatment of pancreatic cancer	Centocor, Inc., 244 Great Valley Pkwy., Malvern, PA 19355.
Generic—monoclonal antiendotoxin antibody XMMENOE5. *Trade*—Same as generic	Treatment of patients with gram-negative sepsis which has progressed to shock.	Pfizer Inc., 235 East 42nd St., New York, NY 10017.
Generic—pentastarch *Trade*—Pentaspan*/**	For use as an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	DuPont Critical Care, 1600 Waukegan Rd., McGaw Park, IL 60085.
Generic—polyribonucleotide *Trade*—Ampligen	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	HEM/Du Pont Immunological Products, Barley Mill Plaza, P27-2320, Wilmington, DE 19898.
Generic—ricin (Blocked) conjugated murine monoclonal antibody (Anti-B4) to B cell (CD 19). *Trade*—Not established	Treatment of B-cell leukemia and B-cell lymphoma.	Immunogen, Inc., 148 Sidney St., Cambridge, MA 02139.
Generic—serratia marcescens extract (polyribosomes). *Trade*—ImuVert	Treatment of primary brain malignancies	Cell Technology, Inc., 1668 Valtec Lane, Boulder, CO 80301.
Generic—ST1-RTA Immunotoxin (SR 44163) *Trade*—Not established	Prevention of acute graft versus host disease (GVHD) in allogenic bone marrow transplantation. Treatment of patients with B-chronic lymphocytic leukemia (CLL).	Sanofi, Inc., 101 Park Ave., New York, NY 10178.
Generic—Technetium Tc 99m Anti-melanoma Murine Monoclonal Antibody Kit. *Trade*—Not established	For use in detecting, by imaging, metastases of malignant melanoma.	NeoRx Corporation, 410 West Harrison, Seattle, WA 98119.
Generic—trisaccharides A&B *Trade*—Not established	Treatment of moderate to severe clinical forms of hemolytic disease of the newborn arising from placental transfer of antibodies against blood group substances A and B. For use in ABO-incompatible solid organ transplantation including kidney, heart, liver, and pancreas. Treatment of moderate to very severe clinical forms of transfusion reactions arising from ABO incompatible transfusion of blood, blood products and blood derivatives. For use in ABO-incompatible bone marrow transplantation (BMT).	CHEMBIOMED, Ltd., 16th Floor Campus Towers, 11145-87th Ave., Edmonton, Alberta, Canada T6G OY1.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic—acetylcysteine *Trade*—Mucomyst/Mucomyst 10 IV	Intravenous treatment of patients presenting with moderate to severe acetaminophen overdose.	Bristol-Myers U.S. Pharmaceutical, 2404 Pennsylvania Street, Evansville, IN 47721-0001.
Generic—aconiazide *Trade*—Not established	Treatment of tuberculosis	Lincoln Diagnostics, P.O. Box 1139, Decatur, IL 62525.
Generic—allopurinol *Trade*—Zyloprim	Ex-vivo preservation of cadaveric kidneys for transplantation.	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—allopurinol riboside *Trade*—Not established	Treatment of cutaneous visceral leishmaniasis Treatment of Chagas' disease	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—amsacrine *Trade*—Amsidyl	Treatment of patients with acute adult leukemia.	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic—anagrelide *Trade*—Not established	Treatment of polycythemia vera	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—anagrelide *Trade*—Not established	Treatment of thrombocytosis in chronic myelogenous leukemia (CML). Treatment of essential thrombocythemia (ET)	Bristol-Myers Pharmaceutical Research and Development Divison, 5 Research Pkwy., P.O. Box 5100, Wallingford, CT 06492.
Generic—antipyrine *Trade*—Not established	Antipyrine test as an index of hepatic drug-metabolizing capacity.	Upsher-Smith Laboratories, 14905 23rd Ave. North, Minneapolis, MN 55441.
Generic—AS-101 *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Scientific Testing, 783 Jersey Avenue, New Brunswick, NJ 08901.
Generic—bacitracin, USP *Trade*—Altracin	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A&B elaborated by Clostridium difficile.	A.L. Laboratories, 452 Hudson Terrace, P.O. Box 1621, Englewood Cliffs, NJ 07632.
Generic—baclofen (intrathecial) *Trade*—Lioresal	Treatment of intractable spasticity caused by spinal cord injury or multiple sclerosis (MS).	Medtronic, Inc., 7000 Central Ave., Minneapolis, MN 55432.
Generic—benzoate/phenylacetate *Trade*—Ucephan*/**	For adjunctive therapy in the prevention and treatment of hyperammonemia in patients with urea cycle enzymopathy (UCE) due to carbamylphosphate synthetase, ornithine, transcarbamylase, or arginosuccinate synthetase deficiency.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
Generic—bethanidine sulfate *Trade*—Not established	Treatment of primary ventricular fibrillation	Medco Research, Inc., 8733 Beverly Blvd., Suite 404, Los Angeles, CA 90048.
Generic—BW B759U *Trade*—Not established	Treatment of severe human cytomegalovirus infections (HCMV) in specific immunosuppressed patient populations (e.g., bone marrow transplant recipients and Acquired Immunodeficiency Syndrome patients).	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—BW 12C *Trade*—Not established	Treatment of sickle cell disease crisis	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—caffeine *Trade*—Not established	Treatment of apnea of prematurity	Pediatric Pharmaceuticals, Inc., 379 Thornall St., Edison, NJ 08837.
Generic—calcitonin-human *Trade*—Cibacalcin*/**	Treatment of symptomatic Paget's disease of bone (osteitis deformans).	Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901.
Generic—calcium acetate *Trade*—Phos-Lo	Treatment of hyperphosphatemia in end stage renal disease (ESRD).	Braintree Laboratories, 60 Columbian St., P.O. Box 361, Braintree, MA 02184.
Generic—ceramide trihexosidase/alpha-galactosidase A. *Trade*—Not established	Treatment of Fabry's disease	Genzyme Corporation, 75 Kneeland St., Boston, MA 02111.
Generic—chenodiol *Trade*—Chenix*/**	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Reid-Rowell, Inc., 210 Main Street West, Baudette, MN 56623-0370.
Generic—chlorhexidine gluconate mouthrinse *Trade*—Peridex	For use in the amelioration of oral mucositis associated with cytoreductive therapy used in conditioning patients for bone marrow transplantation therapy.	Procter & Gamble Co., Sharon Woods Technical Ctr., HB Building, 11511 Reed Hartman Hwy., Cincinnati, OH 45241.
Generic—cetiedil citrate *Trade*—Not established	Treatment of sickle cell disease crisis	Medical Market Specialties, Inc., P.O. Box 150, Boonton, NJ 07005.
Generic—clindamycin *Trade*—Cleocin	Treatment of Pneumocystis carinii pneumonia (PCP) associated with the Acquired Immunodeficiency Syndrome (AIDS). Treatment of PCP associated with AIDS	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic—clofazimine *Trade*—Lamprene*/**	Treatment of lepromatous leprosy, including dapsone-resistant lepomatous leprosy and lepromatous leprosy complicated by erythema nodosum leprosum.	Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901.
Generic—colchicine *Trade*—Not established	For use in arresting the progression of neurologic disability caused by chronic progressive multiple sclerosis (MS).	Pharmacontrol Corporation, P.O. Box 931, Englewood Cliffs, NJ 07632.
Generic—coplymer 1 (COP 1) *Trade*—Not established	Treatment of multiple sclerosis (MS)	TAG Pharmaceuticals, C/O Lemmon Co., Sellersville, PA 18960.
Generic—cromolyn sodium *Trade*—Gastrocrom	Mastocytosis	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cromolyn sodium 4% ophthalmic solution. *Trade*—Opticrom 4% Ophthalmic Solution	Treatment of vernal keratoconjunctivitis (VKC)	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cyclosporine ophthalmic *Trade*—Optimmune	Treatment of severe keratoconjunctivitis sicca	University of GA Research Foundation, College of Veterinary Medicine, University of GA, Athens, GA 30602.
Generic—cyproterone acetate *Trade*—Cyproteron/Androcur	Treatment of severe hirsutism	Berlex Laboratories, 110 East Hanover Avenue, Cedar Knolls, NJ 07927.
Generic—cysteamine (2-aminoethanethiol) *Trade*—Not established	Treatment of nephropathic cystinosis	Jess G. Thoene, M.D., Section of Biochemical Genetics and Metabolism, Dept. of Pediatrics, University of Michigan School of Medicine, Ann Arbor, MI 48109.
Generic—dantrolene sodium *Trade*—Dantrium	Treatment of neuroleptic malignant syndrome	Norwich Eaton Pharmaceuticals, P.O. Box 191, Norwich, NY 13815.
Generic—defibrotide *Trade*—Not established	Treatment of thrombotic thrombocytopenic purpura.	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
Generic—dextran sulfate sodium (UA001) *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Ueno Fine Chemicals Industry, Ltd., 2-31 Koraibashi, Higashi-Ku, Osaka 541, Japan.
Generic—diaziquone *Trade*—Not established	Treatment of primary brain malignancies (Grade III–IV astrocytomas).	Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.
Generic—diethyldithiocarbamate *Trade*—Imuthiol	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Merieux Institute, Inc., 7855 N.W. 12th St., Suite 114, Miami, Florida 33126.
Generic—dimethyl sulfoxide (DMSO) *Trade*—Sclerosol	Treatment of cutaneous manifestations of scleroderma.	Research Medical, Inc., A Subsidiary of Research Industries Corporation, 1874 West 2300 South, Salt Lake City, UT 84119.
Generic—dipalmitoylphosphatidylcholine (DPPC)/phosphatidylglycerol (PG). *Trade*—ALEC (Artificial Lung Expanding Compound)	Prevention & treatment of neonatal respiratory distress syndrome (RDS).	Britannia Pharmaceuticals, Ltd., Forum House, Brighton Road, Redhill, Surrey RH1 6YS, U.K.
Generic—disodium silibinim dihemisuccinate *Trade*—Legalon	Treatment of hepatic intoxication by Amanita phalloides (mushroom poisoning).	Pharmaquest Corporation, 201 Tamal Vista Blvd., Corte Madera, CA 94925; and Dr. Madaus GmbH and Co., Ostmerheimer St., 198, 5000 Koln 91, Federal Republic of Germany.
Generic—d,l-sotalol HCl *Trade*—Not established	Treatment of life threatening ventricular tachyarrhythmias. Prevention of life threatening ventricular tachyarrhythmias.	Bristol-Myers, Co., Pharmaceutical Research and Development Division, 5 Research Pkwy., P.O. Box 5100, Wallingford, CT 06492–7660.
Generic—eflornithine HCl (DFMO) *Trade*—Ornidyl	Trypanosoma brucei gambiense sleeping sickness. Treatment of Pneumocystis carinii pneumonia (PCP) in Acquired Immunodeficiency Syndrome (AIDS) patients.	Merrell Dow Research, P.O. Box 6300, 2110 East Galbraith Road, Cincinnati, OH 45215–6300.
Generic—epidermal growth factor (human) *Trade*—Not established	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery. Acceleration of corneal epithelial regeneration and the healing of stromal tissue in the condition of non-healing corneal defects.	Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608.
Generic—epidermal growth factor (human) *Trade*—Not established	Promotion of cutaneous wound healing in extreme burn treatment protocols.	Ethicon, Inc., Somerville, NJ 08876–0151.
Generic—epoprostenol prostacycline, PGI_2 PGX. *Trade*—Flolan	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs-Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic—epoprostenol *Trade*—Cyclo-Prostin	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta St., Kalamazoo, MI 49001.
Generic—epoprostenol, prostacycline, PGI_2, PGX. *Trade*—Flolan	Treatment of primary pulmonary hypertension (PPH).	Burroughs-Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—etidronate disodium *Trade*—Didronel*/**	Treatment of hypercalcemia of a malignancy managed by dietary modification and/or oral hydration.	Norwich Eaton Pharmaceuticals, P.O. Box 191, Norwich, NY 13815.
Generic—ethanolamine oleate *Trade*—Ethamolin*/**	Treatment of patients with esophageal varices that have recently bled, to prevent rebleeding.	Glaxo, Inc., P.O. Box 13960, Five Moore Drive, Research Triangle Park, NC 27709.
Generic—ethinyl estradiol *Trade*—Not established	Treatment of Turner's syndrome	Gynex, Inc., 570 Lake Cook Rd., Deerfield, IL 60015.
Generic—fludarabine monophosphate *Trade*—Not established	Treatment of chronic lymphocytic leukemia (CLL).	Triton Biosciences, 1501 Harbor Bay Pkwy., Alameda, CA 94501.
Generic—flumecinol *Trade*—Zixoryn	Hyperbilirubinemia in newborn infants unresponsive to phototherapy.	Farmacon, Inc., P.O. Box 586, Westport, CT 06881.
Generic—flunarizine *Trade*—Sibelium	Treatment of alternating hemiplegia	Janssen Pharmaceuticals, 40 Kingsbridge Rd., Piscataway, NJ 08854.
Generic—gallium nitrate *Trade*—Not established	Treatment of hypercalcemia of malignancy	Lyphomed, Inc., 2020 Ruby St., Melrose Park, IL 60160.
Generic—ganciclovir (DHPG) *Trade*—Not established	Treatment of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immunocompromised patients.	Syntex (USA), Inc., 3401 Hillview Ave., Palo Alto, CA 94304.
Generic—gangliosides as sodium salts *Trade*—Cronassial	Treatment of Retinitis Pigmentosa	Fidia Pharmaceutical, 1775 K St., NW., Suite 800, Washington, DC 20006.
Generic—glucocerebrosidase/beta-glucosidase (placenta-derived). *Trade*—Not established	Replacement therapy in patients with Gaucher's Disease Type I.	Genzyme Corporation, 75 Kneeland St., Boston, MA 02111.
Generic—guanethidine monosulfate *Trade*—Ismelin I.V.	Treatment of moderate to severe reflex sympathetic dystrophy and causalgia.	Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901.
Generic—hexamethylmelamine *Trade*—Hexastat	Treatment of advanced adenocarcinoma of the ovary.	Ives Laboratories, 685 Third Ave., New York, NY 10017.
Generic—histrelin *Trade*—Not established	Treatment of central precocious puberty	Ortho Pharmaceutical Corporation, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
Generic—HPA-23 *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Rhone-Poulenc Pharmaceuticals, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.
Generic—hydroxycobalamin/sodium thiosulfate *Trade*—Not established	Treatment of severe acute cyanide poisoning	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023.
Generic—idarubicin HCl *Trade*—Not established	Treatment of acute myelogenous leukemia (AML), also referred to as acute nonlymphocytic leukemia (ANLL).	Adria Laboratories, 7001 Post Road, Dublin, Ohio 43216-6529.
Generic—Iodine I 131 meta-iodobenzylguanidine. *Trade*—Not established	Diagnostic adjunct in patients with pheochromocytoma.	William Beierwaltes, M.D., Nuclear Medicine, University of Michigan, Medical Center, 1405 E. Ann St., Ann Arbor, MI 48109.
Generic—Iodine I 131 6B-iodomethyl-19-norcholesterol. *Trade*—Not established	Adrenal cortical imaging	William Beierwaltes, M.D., Nuclear Medicine, University of Michigan, Medical Center, 1405 E. Ann St., Ann Arbor, MI 48109.
Generic—ifosfamide *Trade*—Ifex*/**	Treatment of soft tissue sarcoma Treatment of bone sarcoma To be used in combination with other approved antineoplastic agents, for third line chemotherapy of germ cell testicular cancer. It should be used in combination with a prophylactic agent for hemorrhagic cystitis, such as mesna*/**.	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY, 13221-4755. Bristol-Myers Co., Pharmaceutical Research and Development Division, Wallington, CT 06492.
Generic—inosine pranobex *Trade*—Isoprinosine	Treatment of subacute sclerosing panencephalitis.	Newport Pharmaceuticals, Inc., 897 W. Sixteenth St., Newport Beach, CA 92663.
Generic—l-alpha-acetylmethadol (LAAM) *Trade*—Not established	Treatment of heroin addicts suitable for maintenance on opiate agonists.	Dixon and Williams Pharmaceutical Co., 43 Old Wood Road, Bernardsville, NJ 07924.
Generic—l-carnitine *Trade*—Vita Carn*	Genetic carnitine deficiency*	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic—l-carnitine *Trade*—Vita Carn	Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
Generic—l-carnitine *Trade*—Carnitor*/**	Primary and secondary carnitine deficiency of genetic origin*/**. Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Sigma Tau, Inc., 723 North Beers St., Holmdel, NJ 07733.
Generic—leucovorin calcium *Trade*—Wellcovorin	Treatment of metastatic colorectal cancer	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—leucovorin calcium *Trade*—Leucovorin*/**	For use in combination with 5-fluorouracil for the therapy of metastatic adenocarcinoma of the colon and rectum. For rescue use after high dose methotrexate therapy in the treatment of osteosarcoma*/**.	Lederle Laboratories, Pearl River, NY 10965.
Generic—leuprolide acetate *Trade*—Lupron Injection	Treatment of central precocious puberty	TAP Pharmaceuticals, D-49N, 1400 N. Sheridan Rd., Abbott Park, IL 60064.
Generic—levocabastine HCl *Trade*—Not established	Treatment of vernal keratoconjunctivitis (VKC)	Iolab Pharmaceuticals, 500 Iolab Drive, Claremont, CA 91711.
Generic—LHRH [(DES-GLY ^{10})-D-Trp^{6}-Pro^{9}-N-Ethylamide)]. *Trade*—Not established	Treatment of central precocious puberty	Roberts Laboratories, Meridian Center III, 6 Industrial Way West, Eatontown, NJ 07724.
Generic—L-Leucine, L-isoleucine and L-valine *Trade*—Not established	Treatment of amyotrophic lateral sclerosis (ALS).	Andreas Plaitakis, M.D., The Mount Sinai Medical Center, Department of Neurology, One Gustave Levy Pl., New York, NY 10029.
Generic—l-5 hydroxytryptophan (L-5HTP) *Trade*—Not established	Treatment of postanoxic intention myoclonus	Bolar Pharmaceuticals, 130 Lincoln Street, Copiague, NY 11726.
Generic—luteinizing hormone releasing hormone (GnRH). *Trade*—Not established	Induction of ovulation in women with hypothalamic amenorrhea due to a deficiency or absence in the quantity or pulse pattern of endogenous GnRH secretion.	Ortho Pharmaceuticals, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
Generic—mazindol *Trade*—Sanorex	Treatment of Duchenne muscular dystrophy (DMD).	Platon J. Collip, M.D., 176 Memorial Dr., Jesup, GA 31545.
Generic—mefloquine HCl *Trade*—Mephaquin	Treatment of chloroquine-resistant falciparum malaria. Prevention of chloroquine-resistant falciparum malaria.	Mephra AG, 4143 Dornach, Aesch Basel, Switzerland.
Generic—mefloquine HCl *Trade*—Lariam	Treatment of acute malaria due to Plasmodium falciparum and plasmodium vivax. Prophylaxis of Plasmodium falciparum malaria which is resistant to other available drugs.	Hoffmann-La Roche Inc., 340 Kingsland St., Nutley, NJ 07110.
Generic—megestrol acetate *Trade*—Megace	Treatment of patients with anorexia, cachexia, or significant weight loss (=/> 10% of baseline body weight) and confirmed diagnosis of AIDS.	Bristol-Myers U.S. Pharmaceutical & Nutritional Group, 2404 Pennsylvania Street, Evansville, IN 47721-0001.
Generic—mesna *Trade*—Mesnex*/**	For use as a prophylactic agent in reducing the incidence of ifosfamide-induced hemorrhagic cystitis.	Degussa Corporation, P.O. Box 2004, Route 46 at Hollister Rd., Teterboro, NJ 07608.
Generic—mesna *Trade*—Not established	Inhibition of the uro-toxic effects induced by oxazaphosphorine compounds such as cyclophosphamide.	Adria Laboratories, P.O. Box 16529, Columbus, OH 43216-6529.
Generic—methotrexate sodium *Trade*—Methotrexate*/**	For use with leucovorin rescue in combination with other chemotherapeutic agents to delay recurrence in patients with non-metastatic osteosarcoma who have undergone surgical resection or amputation for the primary tumor.	Lederle Laboratories, Pearle River, NY 10965.
Generic—metronidazole (topical) *Trade*—MetroGel*/**	Treatment of acne rosacea	Curatek Pharmaceuticals, 1965 Pratt Blvd., Elk Grove Village, IL 60007.
Generic—metronidazole (tropical) *Trade*—Flagyl	Treatment of Grade III and IV, anaerobically infected, decubitus ulcers.	G.D. Searle and Co., Box 5110, Chicago, IL 60680.
Generic—midodrine HCl *Trade*—Amatine	Treatment of idiopathic orthostatic hypotension	Roberts Laboratories, 230 Half Mile Rd., Red Bank, NJ 07701.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations		
Name of drug	Designated use	Sponsor's name and address
Generic—mitoxantrone HCl *Trade*—Novantrone*/**	Treatment of acute myelogenous leukemia (AML), also referred to as acute nonlymphocytic leukemia (ANLL).	Lederle Laboratories, Pearl River, NY 10965.
Generic—monooctanoin *Trade*—Moctanin*/**	Dissolution of cholesterol gallstones retained in the common bile duct.	Ethitek Pharmaceuticals, 8100 North Lawndale Ave., Skokie, IL 60076.
Generic—morphine sulfate concentrate (preservative free). *Trade*—Duramorph	For administration via microinfusion devices in repeated doses or constant infusion, for *epidural* use in the treatment of severe chronic pain which responds inadequately to systemic analgesic therapy or when epidural administration is considered preferable to systemic administration and for *intrathecal* use in patients with refractory pain due to malignancy.	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003-4099.
Generic—nafarelin acetate *Trade*—None established	Treatment of central precocious puberty	Syntex (U.S.A.) Inc., 3401 Hillview Avenue, P.O. Box 10850, Palo Alto, CA 94303.
Generic—naltrexone HCl *Trade*—Trexan*/**	Blockade of the pharmacological effects of exogenously administered opioids as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals.	E.I. du Pont de Nemours, dba Du Pont Pharmaceuticals, 1000 Stewart Ave., Garden City, NY 11530.
Generic—oxymorphone HCl *Trade*—Numorphan H.P	Relief of severe intractable pain in narcotic-tolerant patients.	Du Pont Pharmaceuticals, P.O. Box 12, Manati, Puerto Rico 00701.
Generic—PEG-adenosine deaminase (PEG-ADA). *Trade*—Imudon	Enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency disease (SCID).	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080.
Generic—pentamidine isethionate (Injectable) *Trade*—Pentam 300*/**	Treatment of Pneumocystis carinii pneumonia (PCP)*/**.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—pentamidine isethionate (Injectable) *Trade*—Not established	Treatment of Pneumocystis carinii pneumonia (PCP).	Rhone-Poulenc, 52 Vanderbilt Ave., New York, NY 10017.
Generic—pentamidine isethionate (inhalation) *Trade*—Pneumopent	Prevention of Pneumocystis carinii pneumonia (PCP) in patients at high risk of developing this disease.	Fisons Corporation, 2 Preston Cort, Bedford, MA 01730.
Generic—pentamidine isethionate (inhalation) *Trade*—Pentam 300	Prevention of Pneumocystis carinii pneumonia (PCP) in patients at high risk of developing this disease.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—pentostatin *Trade*—Not established	Treatment of Hairy Cell Leukemia	Warner-Lambert, 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106.
Generic—phosphocysteamine *Trade*—Not established	Treatment of cystinosis	Medea Research Laboratories, Suffolk Co. Airport, Building 32, Westhampton Beach, N.Y. 11978.
Generic—physostigmine salicylate *Trade*—Antilirium	Friedreich's and other inherited ataxias	Forrest Pharmaceuticals, 2510 Metro Blvd., Maryland Heights, MO 64043-9979.
Generic—piracetam *Trade*—Nootropil	Treatment of myoclonus	U.C.B. Secteur Pharmaceutique, 326 Ave. Louise, 105 Brussels, Belgium.
Generic—piritrexim isethionate *Trade*—Not established	Treatment of infections caused by Pneumocystis carinii, Toxoplasma gondii, and Mycobacterium avium-intracellulare.	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, N.C. 27709.
Generic—potassium citrate *Trade*—Urocit-K*/**	Prevention of calcium renal stones in patients with hypocitraturia. Avoidance of the complication of calcium stone formation in patients with uric acid lithiasis. Prevention of uric acid nephrolithiasis.	Charles Y.C. Pak, M.D., University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—potassium citrate and citric acid *Trade*—Polycitra-K	Dissolution and control of uric acid and cystine calculi in the urinary tract.	Willen Drug Co., 18 North High St., Baltimore, MD 21202.
Generic—praziquantel *Trade*—Cysticide	Treatment of neurocysticercosis	EM Pharmaceuticals, 5 Skyline Drive, Hawthrone, NY 10532.
Generic—prednimustine *Trade*—Sterecyt	Treatment of malignant non-Hodgkin's lymphomas.	Pharmacia, Inc., 800 Centennial Ave., Picataway, NJ 08855.
Generic—propamidine isethionate (0.1%) *Trade*—Brolene Eye Drops	Treatment of Acanthamoeba keratitis	Bausch & Lomb, Inc., 1400 North Goodman Street, Rochester, NY 14692-0450.
Generic—protirelin (TRH) *Trade*—Thymone	Amyotrophic lateral sclerosis (ALS)	Abbott Laboratories, North Chicago, IL 60064.
Generic—pulmonary surfactant replacement *Trade*—Not established	Prevention and treatment of respiratory distress syndrome (RDS).	California Biotechnology, 2450 Bayshore Pkwy., Mountain View, CA 94043.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic—quinacrine HCl *Trade*—Not established	Prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patients with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—rifampin *Trade*—Rifadin I.V.	Antituberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Research Inst., 2110 E. Galbraith, Cincinnati, OH 45215.
Generic—rifampin, isoniazid, pyrazinamide *Trade*—Rifater	Short course treatment of tuberculosis	Merrell Dow Research Inst., 2110 E. Gailbraith, Cincinnati, OH 45215.
Generic—selegiline HCl *Trade*—Deprenyl	Adjuvant to levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalitic parkinsonism, and symptomatic parkinsonism.	Somerset Pharmaceuticals, One Olde Town Court, Bernardsville, NJ 07924.
Generic—sermorelin acetate [GRF(1-29)NH2] *Trade*—Not established	Treatment of idiopathic and organic growth hormone deficiency in children with growth failure.	Serono Laboratories, 280 Pond Street, Randolph, MA 02368.
Generic—sodium monomercaptoundecahydrocloso-dodecaborate. *Trade*—Borolife	Treatment of glioblastoma multiforme as an alternative to conventional photon therapy.	Theragenics Corporation, 900 Atlantic Drive, Atlanta, GA 30318.
Generic—sodium oxybate (gammahydroxybutyrate). *Trade*—Not established	Treatment of narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Sigma F&D Div. of Sigma Chemical Co., 3050 Spruce St., St. Louis, MO 63103.
Generic—sodium oxybate (gammahydroxybutyrate). *Trade*—Not established	Treatment of narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Biocraft Laboratories, 92 Route 46, Elmwood Park, NJ 07407.
Generic—sodium pentosan polysulphate *Trade*—Elmiron	Treatment of interstitial cystitis	Medical Market Specialties, P.O. Box 150, Boonton, NJ 07005.
Generic—sodium tetradecyl sulfate *Trade*—Sotradecol	Treatment of bleeding esophageal varices	Elkins-Sinn, 2 Esterbrook La., Cherry Hill, NJ 08003-4099.
Generic—somatostatin *Trade*—Reducin	Adjunct to the non-operative management of secreting cutaneous fistulas of the stomach, duodenum, small intestine (jejunum and ileum), or pancreas.	Ferring Laboratories, Montebello Park, 75 Montebello Rd., Suffern, NY 10901.
Generic—somatrem *Trade*-Protropin */**	Long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—somatrem *Trade*—Protropin	Short stature associated with Turner's syndrome.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—somatropin *Trade*—Humatrope */**	Long-term treatment of children who have growth failure due to inadequate secretion of normal endogenous growth hormone.	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
Generic—somatropin *Trade*—Saizen	Treatment of idiopathic or organic growth hormone deficiency in children with growth failure.	Serono Laboratories, 280 Pond Street, Randolph, MA 02368.
Generic—somatropin *Trade*—Protropin II	Long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—somatropin *Trade*—Norditropin	Treatment of growth failure in children due to inadequate growth hormone secretion. For adjunctive use in the induction of ovulation in women with infertility due to 1) hypogonadotropic hypogonadism, and 2) bilateral tubal occlusion or unexplained infertility, who are undergoing in-vivo fertilization procedures or in-vitro fertilization with embryo transfer procedures, respectively, and who fail to ovulate in response to gonadotropin therapy alone. Treatment of short stature associated with Turner's Syndrome.	Nordisk-USA, 3202 Monroe St., Suite 100, Rockville, MD 20852.
Generic—spiramycin *Trade*—Rovamycine	Symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immunodeficiency.	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic—superoxide dismutase (recombinant/human). *Trade*—Not established	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure.	Pharmacia-Chiron Partnership, 4560 Horton Street, Emeryville, CA 94608.
Generic—superoxide dismutase (recombinant/human). *Trade*—Not established	Prevention of reperfusion injury to donor organ tissue.	Bristol-Myers Co., 5 Research Pkwy., Wallingford, CT 06492.
Generic—surface active extract of saline lavage of bovine lungs. *Trade*—Infasurf	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	Ony, Inc., TDC Incubation Center, 2211 Main Street, Buffalo, NY 14214.
Generic—surfactant (human) (amniotic fluid derived). *Trade*—Human Surf	Prevention and treatment of neonatal respiratory distress syndrome (RDS).	T. Allen Merritt, M.D., University of California San Diego Medical Center, 225 W. Dickinson Street, H-814-J, San Diego, CA 92103.
Generic—surfactant TA (modified bovine lung surfactant extract). *Trade*—Survanta	Prevention and treatment of neonatal respiratory distress syndrome (RDS).	Ross Laboratories, 625 Cleveland Ave., Columbus, OH 43216.
Generic—teniposide (VM-26) *Trade*—Not established	Treatment of refractory childhood acute lymphocytic leukemia (ALL).	Bristol-Myers Pharmaceutical Research & Development Div., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—teriparatide *Trade*—Parathar*/**	Diagnostic agent to assist in establishing the diagnosis in patients presenting with clinical and laboratory evidence of hypocalcemia due to either hypoparathyroidism or pseudohypoparathyroidism.	Rorer Pharmaceuticals, Fort Washington, PA 19034.
Generic—terlipressin *Trade*—Glypressin	Treatment of bleeding esophageal varices	Ferring AB, Soldattorspvagen 5, Box 30651, 200 62 Malmo, Sweden.
Generic—thalidomide *Trade*—Not established	Treatment of graft versus host disease (GVHD) in patients receiving bone marrow transplantation (BMT). Prevention of GVHD in patients receiving BMT... Treatment and maintenance of reactional lepromatous leprosy.	Pediatric Pharmaceuticals, 379 Thornall St., Edison, NJ 08837.
Generic—thymoxamine HCl *Trade*—Not established	Reversal of phenylephrine-induced mydriasis in patients who have narrow anterior angles and are at risk of developing an acute attack of angle-closure glaucoma following mydriasis.	Iolab Pharmaceuticals, 500 Iolab Drive, Claremont, CA 91711.
Generic—tiopronin *Trade*—Thiola*/**	Prevention of cystine nephrolithiasis in patients with homozygous cystinuria.	Charles Y.C. Pak, M.D., The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—tocophersolan oral solution [(Vitamin E, d-alpha tocopheryl polylene glycol-1000 succinate (TPGS). *Trade*—Not established	Treatment of Vitamin E deficiency resulting from malabsorption due to prolonged cholestatic hepatobiliary disease.	Eastman Pharmaceuticals, 2260 Lake Avenue, Rochester, NY 14650.
Generic—tranexamic acid *Trade*—Cyklokapron	Treatment of hereditary angioneurotic edema Treatment of patients undergoing prostatectomy where there is hemorrhage or risk of hemorrhage as a result of increased fibrinolysis or fibrinogenolysis.	Kabi Vitrum. 1311 Harbor Bay Pkwy., Alameda, CA 94501.
Generic—tranexamic acid *Trade*—Cyklokapron*/**	Treatment of patients with congenital coagulopathies who are undergoing surgical procedures e.g. dental extractions.	Kabi Vitrum, 1311 Harbor Bay Pkwy., Alameda, CA 94501.
Generic—tretinoin *Trade*—Not established	Treatment of squamous metaplasia of the ocular surface epithelia (conjunctiva and/or cornea) with mucous deficiency and keratinization.	Spectra Pharmaceutical Services, Hanover Business Park, 155 Webster Street, Hanover, MA 02339.
Generic—trientine HCl *Trade*—Cuprid*/**	Treatment of patients with Wilson's disease who are intolerant, or inadequately responsive to penicillamine.	Merck Sharp & Dohme, Research Laboratories, West Point, PA 19486.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketings*]

[Exclusive Approval*/**]

Drug Designations		
Name of drug	Designated use	Sponsor's name and address
Generic—trimetrexate glucuronate *Trade*—Not established	Treatment of metastatic colorectal adenocarcinoma. Treatment of metastatic carcinoma of the head and neck (i.e. buccal cavity, pharynx and larynx). Treatment of pancreatic adenocarcinoma Treatment of Pneumocystis carinii pneumonia (PCP) in AIDS patients. Treatment of patients with advanced nonsmall cell carcinoma of the lung.	Warner-Lambert, 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106.
Generic—urofollitropin *Trade*—Metrodin*/**	Induction of ovulation in patients with polycystic ovarian disease who have an elevated LH/FSH ratio and who have failed to respond to adequate clomiphene citrate therapy.	Serono Laboratories, 280 Pond Street, Randolph, MA 02368.
Generic—viloxazine HCl *Trade*—Vivalan	Treatment of narcolepsy Treatment of cataplexy	Stuart Pharmaceuticals, Wilmington, DE 19897.
Generic—zidovudine (AZT) *Trade*—Retrovir*/**	Treatment of Acquired Immunodeficiency Syndrome (AIDS). Treatment of certain patients with AIDS Related Complex (ARC).	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—zinc acetate *Trade*—Not established	Treatment of Wilson's disease	Lemmon Co., 650 Cathill Rd., Sellerville, PA 18960.
Generic—4-aminopyridine (4-AP) *Trade*—Not established	Relief of symptoms of multiple sclerosis (MS)	Rush-Presbyterian-St. Lukes Medical Center, 1753 West Congress Pkwy., Chicago, IL 60612.
Generic—5-AZA-2'-deoxycytidine (DAC) *Trade*—Not established	Treatment of acute leukemia	Pharmachemie B.V., Nijverheidsweg 48-50, P.O. Box 552, 2003 RN Haarlem, Holland.
Generic—4-methylpyrazole *Trade*—4-MP	Treatment of methanol, ethylene glycol, 2-methoxyethanol or 2-butoxyethanol poisoning.	Kenneth E. McMartin, Louisiana State University Medical Center, Department of Pharmacology, P.O. Box 33932, Shreveport, LA 71130-3932.
Generic—2'-3'-dideoxyadenosine *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	National Cancer Inst., Bldg. 31, Room 3A49, NIH, Bethesda, MD 20892.
Generic—2'-3'-dideoxycytidine *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Hoffmann-La Roche, 340 Kingsland St., Nutley, NJ 07110.
Generic—2'-3'-dideoxycytidine *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	National Cancer Inst., Bldg. 31, Room 3A49, NIH, Bethesda, MD 20892.
Generic—2'-3'-dideoxyinosine *Trade*—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Bristol-Myers Co., 5 Research Pkwy., P.O. Box 5100, Wallingford, CT 06492-7660.
Generic—2,3-dimercaptosuccinic Acid (DMSA) *Trade*—Not established	Treatment of lead poisoning in children	Johnson and Johnson Baby Products Co., Grandview Road, Skillman, NJ 08858.
Generic—24,25 dihydroxycholecalciferol *Trade*—Not established	Treatment of uremic osteodystrophy	Lemmon Co/TAG Pharmaceuticals, P.O. Box 630, Sellersville, PA 18960.

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Friday,
April 21, 1989

Part IV

Department of Transportation

Research and Special Programs Administration

Transporting Hazardous Wastes; City of Maryland Heights (Missouri) Ordinance Requiring Bond for Vehicles; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-25; Docket IRA-43]

Transporting Hazardous Wastes; City of Maryland Heights (Missouri) Ordinance Requiring Bond for Vehicles

Applicant: City of Maryland Heights, Missouri.

City Ordinance Affected: City of Maryland Heights (Missouri) Ordinance 88-378, Section I.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) issued thereunder.

Mode Affected: Highway.

Issue Date: April 17, 1989.

Ruling: Section I of Ordinance 88-378 of the City of Maryland Heights, Missouri, requiring a $1,000 bond for highway transportation of certain hazardous wastes, is inconsistent with the HMR to the extent it applies to hazardous materials regulated under the HMTA and, therefore, is preempted to that extent under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)).

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Section I of Ordinance 88-378 of the City of Maryland Heights, Missouri, is inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201-107.209.

For Further Information Contact: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 (Tel. (202) 366-4362).

I. Background

On May 13, 1988, Michael K. Moran, Building Commissioner of the City of Maryland Heights, Missouri, filed an inconsistency ruling application. That application requested a ruling concerning the inconsistency with the HMTA of the following prohibition in Section I of the City's Ordinance 88-378:

> No person shall haul sewage, sludge, human excrement, special, hazardous or infectious wastes without providing a bond in the amount of One Thousand Dollars ($1,000) per vehicle for each vehicle, hauling or to haul sewage, sludge, human excrement, special, hazardous or infectious waste.

The City requested that this section be reviewed for consistency with the insurance and indemnification requirements of the HMTA.

On the issue of consistency, the City stated:

> We believe this bonding requirement is not in conflict with the Hazardous Materials Transportation Act inasmuch as it imposes an additional requirement upon haulers; it does not exempt, or attempt to exempt them from the requirements of the Hazardous Materials Transportation Act.

On June 6, 1988 (53 FR 20736), OHMT published a Public Notice and Invitation To Comment soliciting public comments on the City's application. Comments supporting a finding of inconsistency were filed by E & H Hauling Company, Infectious Waste Management, Inc. (IWM), the Chemical Waste Transportation Council (CWTC), the National Tank Truck Carriers, Inc. (NTTC), the American Trucking Associations (ATA), and jointly by the National Private Trucking Association (NPTA) and the Private Truck Council of America (PTCA). No comments were filed by the City of Maryland Heights or any other party in support of a finding of consistency.

II. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37-38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unneccessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215-107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

> (1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

III. Public Comments

As indicated above, the City of Maryland Heights stated in its application its belief that this bonding requirement is "not in conflict" with the HMTA. As discussed in more detail below, all six commenters who responded to OHMT's **Federal Register** Notice opposed a finding of consistency.

E & H Hauling Company, Maryland Heights, states that there is no need for a local bond because of existing liability requirements for hazardous waste transporters. It argues that the ordinance was passed to hinder the solid waste transporting business, and it claims the ordinance is discriminatory because it does not apply to transporters of other hazardous materials (e.g., propane or gasoline). Finally, it contends that the ordinance would be difficult to enforce without permanent roadblocks or inspections of all trucks entering the City.

IWM states that the scarcity of licensed disposal facilities results in long transportation distances for sludge, special, hazardous or infectious wastes. IWM continues:

> Therein lies the problem. As an example, Maryland Heights is one of over 100 communities in the St. Louis Metropolitan Area and is located on two Interstate Highways. If each City in the Metro area adopted an Ordinance of this type and only thirty DOT regulated trucks traveled through this area, it is conceivable that consumer prices on certain products and services could rise in excess of three (3) million dollars annually for the St. Louis consumers alone. On a nationwide basis this figure could reach into the billions. It should also be pointed out that layered bonding causes additional administrative expense at the local level with no return to the citizens.

IWM concludes that trucking bonds can be enforced and administered more efficiently at the state or Federal level than at the local level and urges that bonding of regulated trucking be limited to the state and Federal levels.

CWTC, on behalf of hazardous waste transporters, contends that the City's bonding requirement is inconsistent for several reasons. First, it contends that it is inconsistent with § 177.853(a) of the HMR because it will cause rerouting of hazardous materials around the City.

Second, CWTC argues that this "artificial routing" will be done without adequate safety justification and appropriate coordination with adjoining affected jurisdictions—allegedly in violation of the tenets set forth in Inconsistency Ruling No. IR–1 (IR–1), 43 FR 16954 (Apr. 20, 1978); IR–2, 43 FR 75566 (Dec. 20, 1979), *appeal* 45 FR 71881 (Oct. 30, 1980), *correction*, 45 FR 76838 (Nov. 20, 1980); IR–3, 46 FR 18918 (Mar. 26, 1981), *appeal*, 47 FR 18457 (Apr. 29, 1982); IR–20, 52 FR 24396 (June 30, 1987), *correction*, 52 FR 29468 (Aug. 7, 1987).

Third, CWTC asserts that the City's bonding requirement will divert traffic off the I–270 beltway and onto non-interstate routes or interstates (e.g., I–170) through more densely populated areas. This effect allegedly would contravene a 1977 RSPA interpretation of 49 CFR 387.9.

Fourth, CWTC states that the City has failed to make the purportedly required showing that $1,000 is a reasonable and appropriate amount for the required bond.

Fifth, CWTC contends that the City's requirement is inconsistent with the financial requirements of 49 CFR 387.15. It argues that, despite statements to the contrary in the Public Notice on this matter, RSPA must consider consistency with those requirements—as it allegedly previously did in IR–10, 49 FR 46645 (Nov. 27, 1984), *correction*, 50 FR 1939 (Mar. 12, 1985); IR–11, 49 FR 46647 (Nov. 27, 1984); IR–15, 49 FR 46660 (Nov. 27, 1984); IR–15 (Appeal), 52 FR 13062 (Apr. 20, 1987); IR–18, 52 FR 200 (Jan. 2, 1987), *appeal*, 53 FR 28850 (July 29, 1988).

Sixth, CWTC claims that the City's bonding requirement is inequitable because it is not levied on the transportation of all hazardous materials. It points to the irony that a bond is required for hazardous wastes but not for undiluted non-waste hazardous materials which are more toxic and hazardous than the waste materials.

Finally, CWTC argues that the cumulative effect of multiple state and local bonding requirements would be to ban the transportation of hazardous waste.

NTTC argues that the City's bonding requirement is inconsistent for several reasons. It contends that it is a form of tax or fee applicable because of the nature of the commodity transported and that it will prompt transportation delays in violation of the HMR.

NTTC contends that the City's bonding requirement fails the "dual compliance" test for consistency. It contends that, unlike the Illinois fee involved in IR–17, 51 FR 20925 (June 9, 1986), and IR–17 (Appeal), 52 FR 36200 (Sept. 25, 1987), *correction*, 52 FR 37399 (Oct. 6, 1987), the City's requirement does not support an otherwise consistent safety regulatory program. It also points to unnecessary delays which would be caused by roadside checks to enforce the City's requirements, by carriers' routing their trucks around the City, and by the administrative delays necessarily involved in obtaining the required bond. It argues that the potential for replication by other jurisdictions is relevant because the result will be massive disruptions in traffic flows, a factor which it says must be considered under the "DOT enabling act," which directs the Secretary to "promote" transportation.

In addition, NTTC contends that the City's requirement fails the "obstacle test" for consistency. It argues that, because the City's ordinance provides no compliance methodology or details concerning guarantors or beneficiaries, the Ordinance is a transparent attempt to export risks to other jurisdictions by discouraging the hauling of hazardous wastes through the City. NTTC also urges that consideration be given to "burden of commerce" arguments—despite rejection of such arguments in IR–17 (Appeal), *supra*—because the potential threat of widespread fees and similar financial requirements has became a reality; it contends that the "burden on commerce" argument must be considered by OHMT in deciding inconsistency applications because astute state or local governments will not request waivers of preemption (which would open the door for consideration of "burden on commerce" issues).

The NPTA and the PTCA, in their joint comments, contend that the City's bonding requirement is inconsistent for three reasons. First, they assert that the requirement of a bond as a precondition to hazardous materials transportation would result in rerouting by carriers and an exportation of risk to other communities and thus constitutes a *de facto* ban on hazardous materials transportation. They cite IR–10, *supra*, in support of this contention. In addition, they argue that the rerouting effects of the City's bonding requirement will be aggravated by the existing Federal motor carrier insurance requirements in 49 CFR 387.15.

Second, they contend that the City's requirement will result in unnecessary delays in transit for many shipments because of the rerouting that requirement will cause. Such delays, they argue, result in a direct conflict with § 177.853 of the HMR, which directs that highway shipments proceed without unnecessary delay.

Third, they assert that the City's requirement is inconsistent because of potential multiplicity. In support of this argument, they quote from IR–10, *supra*:

> [I]f any one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation then the very patchwork of varying and conflicting state and local regulations which Congress sought to preclude.

49 FR 46647. NPRA and PTCA also cite IR–6 as declaring City of Covington, Kentucky, prenotification requirements inconsistent for the same reasons.

ATA challenges the consistency of the City's requirements on several grounds. It points out that the City's Ordinance states that the "bond shall assure that the provisions of the Ordinance are satisified" and "shall inure to the benefit of the City of Maryland Heights and persons residing therein." ATA claims that the bond is used to enforce compliance with other provisions of the Ordinance, including requirements to have an annual waste transportation license, to be inspected, to display a sticker, to have specified levels of insurance, and to have vehicles and containers which meet City construction requirements.

ATA also states that the City contains segments of four major interstate highways near the Missouri-Illinois border and that City Manager Moran stated that the City believes it has authority under this Ordinance to regulate trucks passing through the City on Interstate highways and state highways.

Having set forth these premises, ATA advances three separate arguments against the consistency of the City's requirement. It first argument is that the City's requirement is inconsistent with the national uniformity intended by Congress in enacting the HMTA, as reflected in 49 CFR 177.800. They perceive the City's Ordinance as a precedent leading to adoption of different regulations by many jurisdictions which would interfere with compliance with the HMR and reduce safety.

This lack of uniformity, ATA asserts, is demonstrated by the City's prohibiting the use of drivers and vehicles meeting all HMR requirements from transporting hazardous wastes in the City unless the vehicle is bonded, licensed, inspected, insured and constructed in compliance with the City's Ordinance. In particular, ATA points to "ambiguous" requirements that "vehicles and containers used shall be constructed—so as to prevent wastes from spilling" and shall "have spillproof bodies."

ATA's second argument is that the City's Ordinance would create unnecessary delays in transportation in conflict with § 177.853 of the HMR. It expresses concern that delays would result from City inspections to enforce the bonding requirement and from carriers having to await the availability of those specific vehicles in their fleets for which they have obtained a required bond. ATA argues that these delays would not only violate §177.853 but also would constitute an obstacle to compliance with the HMR under IR–22, 52 FR 46574 (Dec. 8, 1987), *correction*, 52 FR 49107 (Dec. 29, 1987).

ATA's third argument is that the City's bonding requirement is an inconsistent routing restriction or ban. It contends that the minimal bond level cannot measurably increase safety, particularly in light of the 49 CFR 387.15 [actually §§ 387.7 and 387.9] requirement for $1,000,000 liability insurance for carriers of hazardous waste in interstate commerce. Nevertheless, ATA contends these bonds will be difficult, costly or impossible to obtain. Therefore, it argues, the bonding requirement will force some carriers to avoid the City and that, therefore, the Ordinance really is a routing restriction or *de facto* ban.

ATA contends that the Ordinance is inconsistent as either a hazardous materials routing restriction or ban. It points out that IR–23, 53 FR 16840 (May 11, 1988), requires routing restrictions to be preceded by a determination of effect on overall public safety and consultation with other affected jurisdictions—neither of which is reflected in the record here. ATA further states that IR–23 indicates that the power to ban is exclusively Federal and that local bans generally are inconsistent.

IV. Ruling

While many of the issues raised in the comments (e.g., delays, routing restrictions, bans, equipment requirements, etc.) may have merit, it is unnecessary to discuss them in order to determine the consistency of the City of Maryland Heights' bonding requirement for the transportation of hazardous wastes.

A local government may not impose any insurance, bonding or indemnification requirement as a precondition to the transportation of hazardous materials. It is necessary to discuss the imposition of such requirements to both radioactive materials and other hazardous materials because the City's bonding requirement appears to apply to both radioactive and non-radioactive hazardous wastes. This issue previously has been resolved with respect to radioactive materials, and this ruling addresses this issue with respect to other hazardous materials, specifically hazardous wastes.

Several prior inconsistency rulings have made it clear that indemnification, bonding or insurance requirements for radioactive materials transportation differing from Federal requirements are inconsistent. IR–10, IR–11, IR–15, IR–15 (Appeal), IR–18, all *supra*; IR–18 (Appeal), 53 FR 28850 (July 29, 1988). This conclusion was stated succinctly by the RSPA Administrator in IR–15 (Appeal):

> The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR.

52 FR 13062.

However, no prior inconsistency ruling or court decision has considered the consistency under the HMTA or the HMR of a local bonding, insurance or indemnification requirement for the transportation of non-radioactive hazardous materials. There is no such requirement in the HMR. OHMT is determining herein, in accordance with *Ray v. Atlantic Richfield Co.*, 435 U.S.

151 (1978), that no such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials.

If OHMT later determines that a bonding, insurance, or indemnity requirement is necessary under the HMTA for the transportation of non-radioactive hazardous materials, it will amend the HMR accordingly. Until such time, the absence of such a requirement in the HMR is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR.

The subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal. The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such requirements, demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

As indicated in IR–10, *supra*, at 46647, this regulatory subject is the type of subject (insurance) about which Congress was concerned when it included preemption language in the HMTA "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation." S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974). Thus, non-Federal bonding, insurance and indemnity requirements for hazardous materials transportation regulated under the HMTA fail the "obstacle" test and are inconsistent with the HMR.

V. Ruling

For the foregoing reasons and on the basis of this record, I find that Section I of Ordinance 88–378 of the City of Maryland Heights, Missouri, is inconsistent with the HMR to the extent it applies to hazardous materials regulated under the HMTA, and, therefore, is preempted to that extent under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)).

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials and Transportation.

Issued in Washington, DC, on April 17, 1989.

[FR Doc. 89–9554 Filed 4–20–89; 8:45 am]

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April 21, 1989

Part V

Department of Transportation

Research and Special Programs Administration

California Department of Motor Vehicles Regulations on Training Requirements for Operators of Vehicles Carrying Hazardous Materials; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-26; Docket IRA-42]

California Department of Motor Vehicles Regulations on Training Requirements for Operators of Vehicles Carrying Hazardous Materials

Applicant: California Department of Motor Vehicles.

Regulations Affected: California Administrative Code, Title 13, Chapter 1, §§ 100.00–100.11.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171–179) issued thereunder.

Mode Affected: Highway.

Issue Date: April 17, 1989.

Ruling: Sections 100.00–100.11 of Title 13, Chapter 1 of the California Administrative Code presently are inconsistent with the HMTA and the HMR to the extent that they apply to operators of motor vehicles transporting hazardous materials who are domiciled in states other than California. Effective April 1, 1992, those regulations will be inconsistent with the HMTA and the HMR to the extent that they apply to operators of motor vehicles transporting hazardous materials who are domiciled in states other than California which issue commercial drivers' licenses (CDL's) under the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701–2716) (CMVSA) and who have hazardous materials endorsements on their CDL's. In addition, § 100.02 of those regulations is inconsistant with the HMTA and the HMR to the extent that its requirements are based upon definitions of hazardous materials not identical to those in the HMR. Otherwise, those regulations however, are consistent with the HMTA and the HMR. To the extent those regulations are inconsistent with the HMTA and the HMR, they are preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)).

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether §§ 100.00–100.11 of Title 13, Chapter 1 of the California Administrative Code are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

For Further Information Contact: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 (Tel. (202) 366–4362).

I. Background

On October 13, 1987, A.A. Pierce, Director of the California Department of Motor Vehicles (DMV), filed an inconsistency ruling application. That application requested a ruling concerning the consistency of §§ 100.00 through 100.11 of Title 13, Chapter 1 of the California Administrative Code with the HMTA and the HMR.

These regulations were approved by California's Office of Administrative Law and filed with the Secretary of State on September 15, 1987.

The following is a brief synopsis of those regulations:

Section 100.00 provides that Federal standards and requirements govern in the event of a conflict between these regulations and Federal statutes or regulations.

Section 100.01 contains definitions of cargo tank, tank configuration, combinations of vehicles with any tank configuration, and bulk liquid load.

Section 100.02 contains requirements for out-of-state drivers. These include requirements that such drivers have received the training specified in § 100.07 applicable to the hazardous material or waste being carried and carry either an employer notice to that effect or a California Non-Resident Special Driver Certificate authorizing carriage of the hazardous materials or waste being carried.

Section 100.03 provides for certificate renewals.

Section 100.04 provides for exceptions to the certificate program.

Section 100.05 specifies bases on which DMV may refuse to issue, or may suspend or revoke, a certificate.

Section 100.06 establishes a program for employer certification of training for drivers of vehicles transporting hazardous waste, hazardous materials or bulk liquid loads.

Section 100.07 sets forth the detailed training requirements for drivers hauling hazardous wastes, hazardous materials, and bulk liquids in combination.

Section 100.08 describes the requirements for employer-issued certificates of driving experience.

Section 100.09 authorizes an employer to file a joint application if it meets all the requirements of Sections 100.06 through 100.08.

Section 100.10 contains recordkeeping and other requirements for employers authorized to issue certificates of training or certificates of experience.

Section 100.11 sets forth the effective dates for these regulations.

California's application requested comparisons of those regulations for consistency with section 112(a) of the HMTA and §§ 171.8, 177.800 and 177.823 of the HMR. The application also requested comparisons of those regulations with 49 CFR 391.4, 391.11, 391.15, 391.25, 391.35, 391.41, 391.43, 391.45, 391.51, and 391.65 of the Federal Motor Carrier Safety Regulations (FMCSR). Finally California's application requested comparisons of its regulations with certain provisions of the Commercial Motor Vehicle Safety Act of 1986.

On November 16, 1987, OHMT published a Public Notice and Invitation to Comment (52 FR 43016) soliciting public comments on California's application. On December 29, 1987 (52 FR 49107), OHMT extended the comment period to April 18, 1988. Comments in support of a finding of inconsistency were filed by the National Tank Truck Carriers, Inc. (NTTC), 3M, Federal Express, the National Private Trucking Association (NPTA), the National Industrial Transportation League (NITL), the American Trucking Associations, Inc. (ATA), the Electric Utility Companies' Nuclear Transportation Group (the Nuclear Group), and the Department of Energy (DOE). Opposing comments, supporting a finding of consistency, were filed by the California DMV, California State Senator John Seymour and the California Trucking Association (CTA).

Conoco requested that OHMT delay its ruling until the Federal Highway Administration (FHWA) completed a rulemaking on Commercial Driver Testing and Licensing Standards, concerning which a notice of proposed rulemaking (NPRM) had been published by the FHWA. Conoco's request is moot because the FHWA published a final rule on that subject on July 21, 1988 (53 FR 27628).

II. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and

local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous material transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. These include *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

III. Public Comments Against Consistency

Several commenters contended that the California DMV regulations are inconsistent without regard to whether they are applied to residents or non-residents of California. Other commenters focused on inconsistencies which allegedly would result if the California regulations are imposed on non-residents of California. (Comments supporting a determination of consistency are summarized in Part IV.)

The following discussions include a summary of the general arguments made against the consistency of the DMV regulations (Section A) and a summary of the arguments alleging inconsistency based on application of the DMV regulations to non-residents of California (Section B).

A. General Arguments Against Consistency

1. Definitions

Citing Inconsistency Ruling 20 (IR–20), 52 FR 29396 (June 30, 1987), *correction*, 52 FR 29468 (Aug. 7, 1987), DOE contends that California DMV's definitions of hazardous materials differ from those in the HMR and, therefore, are inconsistent. DOE specifically cites the State's allegedly "vague" definition of hazardous waste in sections 25115 and 25117 of the California Health and Safety Code; placarding requirements in section 27903 of the California Vehicle Code, and bulk liquid loads in combination as defined in § 100.01(d) of the DMV regulations and sections 12804.1 and 12804.3 of the California Vehicle Code.

2. Information and Documentation Requirements

DOE contends that § 100.02 of the DMV rules is inconsistent with HMR shipping paper and information requirements because it requires information and documentation in excess of Federal requirements. DOE says that § 100.02 requires non-California operators carrying certain hazardous materials to possess either a Non-Resident Special Certificate or a notice from the employing carrier on a State-approved form that the driver has met the DMV training requirements.

Federal Express contends that DMV's § 100.10, requiring out-of-state employers of operators to maintain training records in California, is inconsistent. Citing IR–8, 49 FR 46637 (Nov. 27, 1984), *affirmed* IR–8 (Appeal), 52 FR 13000 (Apr. 20, 1987), NPTA agrees with this contention on the ground that those requirements are redundant with Federal requirements.

NITL, a shipper's transportation trade association, cites IR–22, 52 FR 46574 (Dec. 8, 1987), *correction*, 52 FR 49107 (Dec. 29, 1987), for the proposition that information and documentation requirements in excess of HMR requirements are inconsistent with the HMTA and the HMR. It asserts that the DMV regulations are redundant, place a substantial compliance burden on the private sector, and would do little to improve highway safety.

NPTA and ATA argue that DMV's authority under §§ 100.05 and 100.10,

respectively, to revoke a driver's special certificate or an employer's certification number constitutes unfettered discretion which fails the "obstacle" test and thus is inconsistent.

3. Training Requirements

a. General Training Requirements

Federal Express objects to the training requirements in §§ 100.02 and 100.07 and DMV's attempt to impose its training program on employers authorized to issue certificates to drivers. It contends that the imposition of a separate training requirement which must be evidenced by a certificate applicable only in California is inconsistent with "the overall Federal regulation of training requirements imposed by the Department of Transportation."

NPTA contents that DMV's § 100.07 training requirements are inconsistent with the HMR training requirements in §§ 177.800 (general), 177.816 (flammable cryogenic liquids) and 177.825 (radioactive materials). ATA also alleges inconsistency with § 177.800 of the HMR. NPTA argues that § 100.07 is redundant with the HMR and provides the DMV with unfettered discretion to determine the adequacy of training. These factors lead NPTA to conclude that § 100.07 fails the "obstacle" test for consistency with the HMR.

b. Radioactive Materials Training Requirements

DOE asserts that § 100.07 is inconsistent with § 177.825(d) of the HMR insofar as the former applies to operators of vehicles carrying highway route controlled quantities of radioactive materials (HRCQ). It states that the Federal rules require such drivers to carry a certificate of training as evidence of training within two preceding years and that the DMV rules require a Non-Resident Special Certificate as proof of training renewable every four years, or notice from the employing carrier on a state-approved form valid for 30 days.

Likewise, the Nuclear Group alleges inconsistency of the DMV regulations with § 177.825(d), which, it states, requires drivers of vehicles carrying HRCQ to have received, within two preceding years, training on (i) the HMR pertaining to the specific HRCQ transported, (ii) properties and hazards of those materials, and (iii) procedures to be followed if an accident occurs. Section 177.825(d) also requires the driver to carry a certificate evidencing such training.

The Nuclear Group argues that the existence of these specific HMR training requirements makes the DMV regulations redundant, confusing, and/or burdensome. It foresees the likelihood of delays entering, or diversions around, California. Finally, the Group asserts that OHMT's decision to require specific training for HRCQ drivers but not for drivers of other radioactive materials precludes California from imposing training requirements on the latter drivers. It contends that California should file a rulemaking petition with OHMT if it deems such additional training regulations necessary.

B. Arguments Against Consistency Based on Applicability to Non-California Operators

1. General Arguments

Federal Express states its concerns about application of the DMV regulations to non-California operators:

> Federal Express engages in some transborder truck operations into * * * California and each non-resident driver on each route would be required to complete California training prior to driving a vehicle to a California location. The utilization of a particular driver on any route cannot be guaranteed and emergency replacements are frequently necessary. As a result, this requirement imposes a substantial burden on Federal Express. Federal Express would have to specifically train any individual who might be asked to serve as a replacement driver on the California-approved program. This requirement could impair or prevent Federal Express from operating these routes when the regular driver is unexpect[ed]ly ill or otherwise unable to drive.

NITL expresses its concern about the burdens the DMV regulations allegedly would place on interstate commerce and their effect on the FHWA's commercial driver licensing rulemaking.

NPTA states that minimum requirements for training and testing of hazardous materials drivers must be nationally uniform rather than established and implemented individually by states. It argues that: "To the extent California's training and testing regulations will apply to non-resident drivers and employers engaged in the transport of hazardous materials in interstate commerce, California's regulations should be ruled inconsistent with the requirements of the HMTA and the HMR."

NPTA challenges the consistency of DMV's § 100.02, which, NPTA says, requires a non-California driver to demonstrate compliance with the § 100.07 training requirements and to possess either a California Non-Resident Special Certificate or a notice signed by the driver and his or her employer certifying that the driver has met the § 100.07 training requirements. NPTA asserts that these requirements fail the "dual compliance" test by causing delays in transportation in violation of § 177.853 of the HMR. NPTA argues that this would occur because most carriers would not license all their drivers in California and thus routinely would have to delay shipments into or through California to obtain the services of a California-approved driver.

Similarly, NPTA attacks the consistency of DMV's § 100.06 concerning employer certification of training:

> First, the necessity for drivers to take a written test prepared by California (presumably by Cal DMV) and administered (presumably) in California poses a substantial, time consuming and costly burden for drivers and carriers alike. The labor contracts of many carriers will require them to bear the administrative and financial expenses which the taking of a written test in California will entail. Under most agreements, the carrier would be responsible for the driver's wages and travel expenses. Shifting such expenses from the carrier to the driver will not lessen or alter the outcome either. Although the operations of many carriers may be nationwide in scope, it does not necessarily follow that every driver employed or leased to a particular carrier will routinely operate throughout that carrier's route system, if at all; this is one of many operational uncertainties that confront carriers. Obviously, the inability to identify with certainty which drivers will operate in California, when, or for how long, together with the administrative and financial expenses associated with the taking of the written test, will serve to limit the number of drivers obtaining California licenses under subsection (a). Thus, carriers' compliance with the requirements of subsection (a) will, in many cases, cause unnecessary delays in transport in violation of 49 C.F.R. § 177.853, as interstate shipments of hazardous materials moving through or destined for California but not under the control of a California-licensed driver will routinely be forced to stop at California's borders while a California-approved driver can be located and substituted for the non-California-licensed driver.
>
> For many carriers and drivers, these effects will not be altered by the opportunity for carriers to obtain an employer number and issue training certificates under subsection (b). First, considering the number of carriers and drivers that will have to pass scrutiny under subsection (b), there will be a dearth of California-licensed drivers available. Thus, unnecessary delays in transit are an inherent part of subsection (b). This problem will be compounded by the unfettered discretion which subsection (b) appears to give Cal DMV in determining whether an employer has met its requirements, which will undermine to some extent the speedy implementation of subsection (b).

Likewise, the NTTC contends that those DMV regulations impose a requirement different from Federal requirements and thus fail the "dual

compliance" and "obstacle" tests if and when applied to non-California employers or drivers. It points out that the DMV rules apply only when hazardous materials are being transported and asserts that the controversy concerning them arises only because of their proposed applicability to non-California drivers.

NTTC also urges OHMT to take notice of section 12009(a)(14) of the CMVSA, 49 App. U.S.C. 2708(a)(14), in which Congress mandates that states honor a commercial driver's license issued by any other state "in accordance with minimum Federal standards for the issuance of such licenses." It asserts that the DMV has failed to comply with the Congressional mandate for uniform state standards contained in section 12006 of the CMVSA, 49 App. U.S.C. 2705. ATA concurs with the NTTC's CMVSA argument and also supports preemption under the Federal Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2507(c)(4)).

Finally, NTTC argues that California's application of its licensing requirements to persons not holding a California license or permit violates the "dual compliance" test. It describes a few scenarios to demonstrate unnecessary delays which it claims could result from the DMV regulations and states that these potential delays directly contravene § 177.853 (a) and (b) of the HMR:

> The problem comes when the Golden Bear extends its regulatory paw to drivers licensed in other states.
>
> California's rules (under evaluation, here) force out-of-state employers to create an administrative process just to comply with the California rules—a process which will require constant review and updating.
>
> "Call and demand service" is the very essence of the for-hire tank truck business. Typically, vehicles and drivers are dispatched on very short notice. Here is the core of "unnecessary delay." For the purpose of illustration we submit the following scenario (based on the assumption that California's rules would be enforced):
>
> Carrier A, based in Denver, Colorado, receives an order to transport acetone from Denver to Sacramento, California, in a cargo tank motor vehicle. Driver and vehicle must be dispatched from the carrier's Pueblo, Colorado, terminal. That carrier must now sift through the following options.
>
> (a) All of the carrier's Pueblo-based drivers are "California qualified"—no problem, no delay.
>
> (b) None of the carrier's Pueblo-based drivers are "California qualified", and the carrier refuses the load—delay is caused because (now) the shipper must locate another carrier with appropriate equipment and "California qualified" drivers. The delay is "unnecessary", because, absent the State's singular licensing requirement, the load would have been transported.
>
> (c) None of the carrier's Pueblo-based drivers are "California qualified", but the carrier does not refuse the load—delay is caused because the carrier must obtain and complete the "form approved by the department" (as mandated by CAC 100.02(e)(2)); train the driver (as mandated by CAC 100.06 and 100.07(2)(b)); then, dispatch the loaded trailer. Again, the delay is unnecessary because, absent the State's singular licensing requirement, the load would have been transported immediately following the first customer/client contact.
>
> (d) Some of the carrier's Pueblo-based drivers are "California qualified", but those drivers are "short on hours" (re: Federal Hours of Service regulations), and could complete the trip only with an "in service" interruption—here, the delay is inevitable and unnecessary. Had the California rules not been in force, the carrier would have selected a driver with a maximum number of available hours.
>
> Without strain, any number of variations can be constructed from this scenario. For instance, let us assume that our hypothetical load of acetone arrives at its California destination under the steady hand of a driver "California qualified" for "Hazardous Materials" (at CAC 100.07(2)(b)). However, upon arrival, the consignee rejects the load, as contaminated. At this point, the load (still in the same trailer and under the control of the same driver) becomes "Hazardous Waste". Since the driver is not qualified under 100.07(a) for "Hazardous Waste", the carrier is faced with a limited number of choices—all bad. The carrier could urge the consignee (now shipper) to "cheat" and not cut a hazardous waste manifest; or, the carrier could order the unit and driver back to Pueblo (and pray that the unit is not stopped for inspection); or, the carrier could order the unit to sit in California until a driver, qualified under CAC 100.07(a), can come and pick up the trailer containing the contaminated product.
>
> In any such situation, the potential for unnecessary delay is obvious.

ATA contends that the DMV regulations would prohibit experienced drivers who are authorized by DOT to transport hazardous materials anywhere else in the Nation from transporting hazardous materials in California. ATA argues that this lack of uniformity is an obstacle to compliance with the HMR, especially § 177.800, and thus is inconsistent with the HMR.

ATA advances the following argument concerning how application of the DMV regulations to non-California drivers would lead to delays and, therefore, inconsistency with the HMR:

> The California regulations would create delays in the transportation of hazardous materials. A driver of a vehicle containing hazardous materials will be stopped in California if he does not have evidence that he has been trained and tested in accord with California's unique requirements. Any vehicle stopped will be delayed.
>
> There are more than 3 million drivers of commercial vehicles in the United States. Except for drivers who never transport hazardous materials or do not ever drive in California, each of these drivers would have to be trained and tested to meet California's requirements. This poses real problems for the majority of drivers affected and will lead directly to delays in transportation.
>
> First, drivers who are owner-operators are self-employed and so would not be able to turn to an employer for training, testing and certification. An owner-operator based outside of California would either have to make a special stop in California or delay the transportation of hazardous material while the owner-operator is trained and tested. Depending on California's specific requirements, the training could take days or weeks.
>
> Second, motor carriers that transport cargo in California irregularly would not want to go through the cost and recordkeeping which is required by California to become an employer authorized to train, test and certify drivers. Therefore their drivers would also have to make a special stop or delay the transportation of hazardous material.
>
> Each such delay is in direct conflict with the provisions of 49 CFR § 177.853 that mandate that highway shipments of hazardous materials be transported without unnecessary delay. Such delay is also an obstacle to compliance with the HMR. As decided by OHMT in IR-22, "hazardous materials transportation delays * * * constitute an independent basis for finding [regulations] to be inconsistent with the HMR." *Ibid.*, at 46584. Therefore, the regulations should be preempted.

2. Precedential Effects

Federal Express sees the DMV regulations as a forerunner to similar requirements in all 50 states and that Company's being required to develop and maintain separate training programs, compliance procedures and records for each of those states. NPTA shares these views, particularly with respect to training and records requirements.

Similarly, the Nuclear Group says that hazardous materials transportation safety is an issue of concern to all the states and that the "regulatory balkanization that would result from piecemeal action at the state level to address this issue could actually decrease the safety of the interstate transportation of hazardous materials." The Group contends that driver training requirements should be developed at the national, not state, level.

3M shares these concerns about the costs to carriers and shippers which would result from numerous states imposing multiple standards and certifications. 3M concludes:

> Administrative costs would increase as a result of comparing state requirements, updating programs, certification of driver training programs by state(s), and

unnecessary additional training of drivers. Increased fees for special licenses/permits with no demonstrable benefit to the public will result in higher transportation costs. Furthermore, the carrier industry is already operating on competitive profit margins and it is arguable that the increased costs of these regulatory duplications will further financially burden carriers and may precipitate bankruptcies.

Duplicative regulations concerning drivers training results in additional substantial private costs without perceivable public benefit.

NPTA argues that, because other states and localities will adopt their own unique criteria for licensing drivers of hazardous materials shipments if the DMV's requirements are found consistent, § 100.02 should be found to violate the "obstacle" test. As an example, it cites certain New York City driver licensing requirements concerning which OHMT deferred ruling in IR–22, *supra*, pending the outcome of this proceeding.

It also cites IR–19, 52 FR 24404 (June 30, 1987), *correction*, 52 FR 29468 (Aug. 7, 1987), *affirmed* IR–19 (Appeal), 53 FR 11600 (Apr. 7, 1988), and IR–22, *supra*, for the proposition that the comprehensiveness of the HMR severely restricts previously permissible state and local regulatory activity.

Finally, NPTA provides the following analysis of the effect of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA):

As sections 12005 and 12006 of the Commercial Motor Vehicle Safety Act of 1986 ("CMVSA"), 49 U.S.C. App. 2704 and 2705, so clearly demonstrate, in directing DOT to promulgate standards for the testing and licensing drivers, including specific subject-matter training for drivers of hazardous materials, Congress intended "to establish uniform standards for testing and licensing operators of commercial motor vehicles." H.R. Rep. No. 99–901, 99th Cong. 2d Sess. 1 (1986) ("House Report"). Further, notwithstanding that the CMVSA reserved to each state the right to impose more stringent standards, House Report, *supra* at 3, section 12009 of the CMVSA, 49 U.S.C. App. 2708, also makes clear that this right is restricted to the resident drivers of each state; that as a condition of participation in the federal licensing program created by the CMVSA, the states are required to honor the licenses of other states issued in accordance with the minimum federal requirements. Thus, the CMVSA is not only in keeping with the HMTA, its requirements for driver testing and licensing are in furtherance of the HMTA's objectives "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 93–1192, 93rd Cong., 2d Sess. 37 (1974); *see, also*, IR–6, *City of Covington Ordinance Governing Transportation of Hazardous Materials by Rail, Barge, and Highway Within the City*, 48 *Fed. Reg.* 760 at 761 (Jan. 6, 1983).

IV. Public Comments Supporting Consistency

Three commenters presented arguments supporting the consistency of the DMV regulations and rebutting the opposing arguments summarized above in Part III. Their arguments are summarized below in the same order as the counterpart arguments were summarized in Part III.

The following discussions include a summary of the general arguments supporting the consistency of the DMV regulations (Section A) and a summary of the arguments supporting the consistency of the DMV regulations as applied to non-residents of California (Section B).

A. General Arguments Supporting Consistency

1. Definitions

In response to DOE's comment that DMV is using hazardous materials definitions inconsistent with the HMR definitions, DMV responds that the California statutes containing those definitions are not the subject of this inconsistency review. DMV contends that its regulations merely specify which drivers—in addition to those specified in the HMR—must receive training for the operation of vehicles carrying certain cargoes in California.

2. Information and Documentation Requirements

To a comment expressing concern about DMV's employer recordkeeping requirements, DMV responds:

Only employers with DMV employer numbers must keep the records described in Section 100.10(a). Employer numbers are issued only to companies which employ California-licensed drivers. Since the training records will, in most cases, be kept on California-licensed drivers, the requirement that the records be kept in California is reasonable. DMV will be monitoring both the training and training records for employers given DMV employer numbers.

3. Training Requirements

a. *General training requirements.* DMV presents the following arguments in support of the consistency of its training requirements:

Every attempt was made in formulating these regulations to ensure that they do not conflict with federal regulations or unreasonably burden commerce. Congress, by enacting the Commercial Motor Vehicle Safety Act of 1986, has acknowledged the need to test and ensure the fitness of commercial vehicle operators. Logically, the only practical method to ensure fitness is to adequately train and test these drivers; the proposed regulations and related California Vehicle Code sections provide for reasonable methods and alternatives to train and test drivers of vehicles which pose the greatest risk of harm, due either to the type of load carried and/or the design of the vehicle. Furthermore, California's training requirements parallel the federal requirements so closely that a carrier who is currently meeting the federal requirements will also be meeting California's training requirements.

For carriers who employ California-licensed drivers, California's new regulations establish standards for employer issuance of certificates of training by specifying the following:

- The conditions authorizing the Department to refuse the employer the authority to issue training certificates or to suspend, revoke, or cancel that authority once it has been granted.
- The Department's authority to monitor training classes and records.
- The procedures to provide hearings for employers whose authority to issue training certificates is being refused, suspended, or revoked.

This regulation ensures that only qualified employers who provide adequate training and have records showing they have done so) are allowed to issue certificates of training to California-licensed drivers. Without this requirement, unscrupulous employers without the resources, or even intention, to provide adequate training would be allowed to issue certificates of training to California drivers. The drivers for such employers would be able to avoid the tests for the certificates. These untrained drivers would then be allowed to haul hazardous materials or waste or to operate large tank vehicles on public roads, posing a serious risk to the safety of persons using California highways.

The provisions related to application for employer number, on departmental forms, has no parallel in federal regulations. Nevertheless, these provisions are not inconsistent with federal requirements because the application provisions only apply to motor carriers who wish to be issued an employer number and, as such, are not an obstacle to the accomplishment and execution of the Hazardous Materials Transportation Act. These provisions place no burden on interstate commerce because applying for an employer number is merely an *option* available to carriers who employ California-licensed drivers. No one is *required* to apply for an employer number.

In response to comments alleging that DMV's §§ 100.07 and 100.10 provide DMV with "unfettered discretion," DMV states that its training requirements are specific and provide clear guidance and that, likewise, the guidelines for suspension of an employer number are specific. As to the latter, DMV asserts that decisions will be made case-by-case but that findings will be based on whether an employer met or did not meet the DMV's regulatory requirements.

b. *Radioactive materials training requirements.* DMV responds to comments alleging inconsistency of its regulations with § 177.825(d) of the HMR by pointing out that that regulation does not require a driver carrying radioactive materials to carry a certificate of training unless the driver is carrying HRCQ. DMV contends that its broader training certificate requirements help to resolve a serious enforcement problem and enhance enforcement of the HMR. In addition, DMV states that, pursuant to State statute, it will recognize driver training certificates issued under § 177.825(d) as "equivalent certificates."

In response to the Nuclear Group's comments that the DMV regulations are inconsistent with § 177.825(d) of the HMR, DMV states:

> Unless and until the Federal Government adopts comprehensive training requirements, enforceable through a certification process, California regulations are neither redundant nor "duplicative." California training requirements for hazardous materials drivers are a proper exercise of the State's police power. In any case, the regulations do not exceed current federal training requirements.

B. Arguments Supporting Consistency of Applicability to Non-California Operators.

1. General Arguments

In response to comments that application of the DMV regulations to non-California operators is inconsistent, DMV contends that such application is necessary to identify, monitor and require training of, drivers from other states who transport extremely hazardous materials and wastes through California cities. DMV explains how it intends to facilitate compliance by non-California operators:

> * * * California regulations provide for employer-issuance of a 30-day temporary notice, so that an out-of-state driver may bring affected cargoes into California when the driver has not previously had an opportunity or need to obtain the certificate. Upon implementation of this certificate program, these temporary notice forms will be provided by the Department to employers who are licensed to transport hazardous materials or hazardous waste in California. Copies will also be provided to administrators of other states so that employers in sister jurisdictions will have ready access to this form. In addition, employers will be allowed to duplicate copies of these forms as they are needed. This temporary notice process was developed specifically to minimize inconvenience to the employer while ensuring that only adequately trained drivers will be transporting hazardous materials, hazardous waste, or bulk liquids in California.
> * * * * *
>
> The requirements for out-of-state drivers were intended to ensure drivers were complying with federal training requirements while minimizing inconvenience to both driver and employer. The Department of Motor Vehicles will issue Non-Resident Special Driver Certificates to out-of-state drivers who meet the qualifications outlined in the new California regulations. The Department of Motor Vehicles will provide carriers who employ out-of-state drivers with a form the carriers can use. On this form they can list their out-of-state driver, check the driver's record in his home state and, if the driver is qualified, mail the driver a Non-Resident Special Certificate.
> * * * * *
>
> California's requirements parallel federal regulations by requiring the employer to certify that the driver has met the training requirements set forth in the California regulations. In addition, the driver is required by the California regulation to carry evidence of such training in the form of a Non-Resident Special Driver Certificate (or recognized equivalent). This requirement will enhance enforcement of federal regulations since California's training requirements are based on requirements in the Code of Federal Regulations and enforcement personnel can immediately determine, upon stopping drivers, if they have received the required training and test(s).
> * * * * *
>
> California regulations are consistent with federal requirements in that the employer of out-of-state drivers must certify his drivers have been trained in accordance with California's training requirements which are based on federal requirements. The employer may do this on a form provided by the Department. This form will be provided to all carriers licensed to transport hazardous materials and/or hazardous waste in California. California does not intend to monitor the training given to out-of-state drivers. Unless some evidence indicates California should do otherwise, a carrier who certifies that an out-of-state driver has been properly trained will be believed without further evidence required.

In addition, DMV argues that applicability of its requirements to non-California operators is consistent with the CMVSA:

> The Commercial Motor Vehicle Safety Act of 1986 clearly indicates that the Federal Government intends that states issue commercial driver licenses and that states ensure that those commercial drivers who transport hazardous materials understand how to transport such materials safely. Under California law, the California Department of Motor Vehicles will recognize commercial driver licenses issued in accordance with those new federal standards. It may well be many years before an effective national commercial vehicle driver license program exists. Until then, the Department has a duty to protect the California public as mandated under the California Vehicle Code. California law allows the Department to exempt, from California certificate requirements, any driver who holds a valid license, endorsement, or certificate from his or her state, country, or territory of residence which corresponds to California's certificate. Once other states develop standards for knowledge, testing, etc., that equal or exceed California's, the Department will exempt their qualified drivers from the Department's certificate requirements.

The California Trucking Association (CTA) provides comments supporting California's regulation of out-of-state operators:

> ATA makes quite an issue of the "lack of uniformity" and "need for uniformity" issues without considering the factual situation that California is far ahead of many states in special statutory requirements for the transportation, routing, packing, and retention of loads of hazardous materials and waste. Why should a driver from a substandard driver licensing state be allowed to blithely operate in ignorance in California carrying a load the legislature has already determined needs special attention and controls?
>
> The uniformity ATA speaks to should not lend itself to the lowest denominator, but rather should establish a creditable basis which can be improved upon. There has been no strong effort by ATA to challenge the special California requirements for maintenance of underground storage tanks by interstate carriers having terminals in California.
>
> Yet this program which attempts to assure public protection from upward climb of truck accidents in California has been challenged on the basis it is an obstacle to uniform enforcement (ATA comments, Page 6, 1st paragraph). There is no such thing and can never be "uniform enforcement of the law." There are too many varying factors involved in such an objective beginning with the knowledge, training, and administrative instructions to the enforcement officer and the PARTICULAR or PECULIAR NEEDS OF THE STATE.
>
> The "For example" (ATA Page 6, 3rd paragraph) challenges the California regulation as to minimum training requirements of "driving and parking rules applicable to hazardous materials transportation", illustrates the problem with stressing uniformity at the lowest denominator. The regulations [include] this particular statement because California statutes cover these items, and drivers moving hazardous materials here should not do so in ignorance.
>
> There is no obstacle to compliance with HMR & HMTA since the California system provides for a system of employer certification (including owner operators), reciprocal recognition of equivalent states' endorsement or certification programs, and statewide facilities to accommodate others.

California State Senator John Seymour provides an explanation for California's legislative decision to apply its certification procedures to non-California operators. He describes his legislative efforts which resulted in passage of Senate Bill 895 in the 1983–84

legislative session, the prime support provided by the California Trucking Association, and the legislative concerns about non-California operators.

Concerning the latter issue, Senator Seymour states:

In the course of moving the legislation, a number of changes were made to meet opposition and some legislative concerns. One of the questions regularly asked at all hearings and floor debates was: "What about the out of state drivers? You are upgrading the California driver * * * but will the driver from another state be at the same level?" Recognizing that this was a good point and also recognizing California has been a leading state in legislation for special statutes in transporting, handling, parking, and routing of loads of hazardous waste and materials, all of which require additional information beyond federal regulation. Additionally, California's topography is sufficiently different from the driving experience of most out-of-state drivers that we need to assure drivers that specialty vehicles (tanks in combination) are capable of meeting California road conditions. All of this was considered in responding to the legislative concerns about out-of-state drivers and the Vehicle Code was amended to provide the following:

Driver Certification: Not Required

3103. (a) No nonresident having in his or her immediate possession a valid driver's license, endorsement, or certificate issued by a foreign jurisdiction of which he or she is a resident permitting the operation of vehicles requiring certification under Section 12804.1 or 12804.3, shall be required to obtain certification under 12804.1 or 12804.3, if the Department of Motor Vehicles determines that the law of the foreign jurisdiction pertaining to the license, endorsement, or certificate is at least equivalent to the requirements of this state pertaining to certification under Section 12804.1 or 12804.3.

This statute permits the DMV to waive their nonresident certfication requirement upon determining the equivalency of the home state certification. This is a reasonable approach to the problem and provides some guarantee that a driver shopping for the least difficult license to obtain will not find it to be an advantage for the operation in California. Additionally, since it will be a number of years before the new federal Drivers License Standards are nationwide and upgraded, the DMV regulations provide the public safety benefits intended by my bill.

It is therefore requested that recognition be given to California leadership in this program and that the DMV's request for acceptance of their regulations be approved.

DMV also responded to numerous comments alleging that transportation delays would result from DMV's regulations. First, it argues that its § 100.07 is "in line with" the intent of Federal regulations requiring that drivers be "trained, experienced, or instructed." DMV then adds:

However, California recognized that often drivers are hired and sent into California almost immediately. For this reason, the 30-day temporary operating notice was included in these regulations to minimize the burden on out-of-state employers who must send their drivers into California on short notice. The 30-day period was chosen to allow enough time for the driver to complete his or her trip, return home, and find a DMV issued certificate in the mail box. DMV will issue a certificate to an out-of-state licensed driver only when DMV determines that the driver qualifies, based upon his or her driving record in California, as well as in other states, and upon the employer's certification that the driver has been adequately trained. The new employer does not have to retrain an already qualified driver himself, but the employer must satisfy himself that the driver is qualified by sufficient training and experience to transport the load before certifying that the driver has been trained.

In response to an ATA comment that an owner-operator based outside California would either have to make a special stop in California or delay transportation of a hazardous material while the owner-operator is trained and tested, DMV says: "Drivers who are owner-operators based outside of California are responsible for their own training, testing, and certification, just as they are responsible for meeting other legal requirements as a motor carrier."

On the issue of delays, CTA provides the following comments:

The question of delay is similar to arguments previously expressed when California required *all* transporters of hazardous materials to secure a California Hazardous Permit from the Highway Patrol. Again the protection of the public was paramount and the inconsistency ruling was approved.

The whole issue of employer certification (including owner operators) has been misunderstood as to what will be required and the processing by the Department of Motor Vehicles. This detail should be available from the department to clear up this issue.

The real issue here is: Does a state in its inherent right to protect its citizens have to adhere to lesser standards that will not provide the safety program intended by the legislature and regulations in question.

The inconsistency ruling should be approved as was the case of the hazardous Permit requirement.

2. Precedential Effects

In response to comments that the DMV regulations constitute a precedent undermining national uniformity, DMV replies that it may be years before an effective national CDL program exists and that, until then, DMV has a duty to protect the California public.

DMV contends that its regulations represent timely implementation of the CMVSA at the state level—as contemplated by the CMVSA.

DMV provides the following response to NPTA's concerns about the potential impact of similar recordkeeping requirements being imposed by other states or localities:

Federal regulations require employers to keep a driver qualification file on each driver they employ. Information on testing and training must be kept in this file. Federal regulations require the employer to keep driver qualification files at the carrier's principal place of business. However, the carrier can request, and be granted, permission to keep such files at a regional or terminal office.

California regulations also require that training records be kept by employers issuing certificates of training to their drivers. This information could easily be kept in the driver's qualification file. California's regulations require California-based employers to keep these records at their primary place of business or at locations the employer designates on his application for an employer number. An employer based outside of California can keep these records at this California terminal or at other designated locations in California. An employer who has no California terminal can keep these records at their primary place of business or other designated locations. California's requirements for location of these records is also consistent with federal requirements and, in fact, should enhance enforcement of these federal requirements.

V. Ruling

California is commended for its leadership in developing a program, statute and regulations concerning the difficult, significant and complex issues involved in the licensing and training of operators of motor vehicles carrying hazardous materials. That State is deservedly recognized as a national leader in these and other motor vehicle operating licensing issues.

Furthermore, California deserves full credit for coming forward on its own volition to seek an inconsistency ruling on the many complex issues involved in its long and difficult undertaking. The fact that, as discussed above, differing parties have a diversity of views on the consistency of certain of the California regulations is a result of the complex and controversial nature of the regulations and in no way reflects adversely on the quality, good faith and diligence of the State's efforts.

In addition, California's cooperative approach to the Federalism and interstate issues involved here is

demonstrated by its initial regulation under review:

§ 100.00. To the extent that the provisions of this article conflict with Federal statutes or regulations, the Federal standards and requirements shall govern the activities otherwise addressed in this article.

Finally, California has indicated in its rebuttal comment that: "California's request for an Inconsistency Ruling was made to ensure that these state regulations are in consonance with DOT's intentions. Any portion of the regulations found to be inconsistent will not be implemented."

In summary, California has acted responsibly, diligently, openly and in good faith to implement a high quality program in a manner consistent with the laws executed by, and the regulations issued by, DOT.

Although intended primarily to reconcile the DMV requirements with those issued under the HMTA, this ruling also provides guidance on the interface between the CMVSA and the HMTA. It recognizes legitimate state interests under the CMVSA and construes the preemptive effect of the HMTA and the HMR in a manner which takes those state interests into account.

The following discussion of the consistency/preemption issues raised by the commenters is organized in a manner parallel to that used in discussing the comments in Parts III and IV.

A. General Consistency Issues

1. Definitions

DOE asserts that the California statutory definitions of hazardous materials used by DMW are inconsistent with those in the HMR. DMV argues that the State statutory provisions are not the subject of this review; however, DMV did submit a copy of the State Vehicle Code with its application for this ruling.

Although not included by DMV in its inconsistency application, it is necessary to examine those State statutory provisions which defined terms used in the DMW regulations at issue in this proceeding. Section 100.02, the subject of most of the comments, provides:

A driver from another state, territory, or country is authorized to drive in California without the drivers certificate required by Vehicle Code section 12804.1 or 12804.3 providing the driver meets all of the following requirements:

* * * * *

Section 12804.1 requires a special DMV certificate for drivers of motor vehicles required to display placards or makings pursuant to section 27903 of the Vehicle Code or hauling hazardous waste as defined in sections 25115 and 25117 of the Health and Safety Code.

Section 12804.3 requires a DMV special certificate for drivers of tank trucks required to be operated by a class 1 driver and transporting bulk liquids.

Section 27903 appears to be generally consistent with the HMR because it merely requires, with exceptions not relevant to this proceeding, compliance with the HMR regulations on placarding of vehicles carrying hazardous materials.

However, section 25115 (defining "extremely hazardous waste") and section 25117 (defining "hazardous waste") appear to be California-unique definitions different from the HMR definitions of hazardous materials. This is because the State's definitions differ from the criteria used by the U.S. Environmental Protection Agency (EPA) to define "hazardous wastes" (40 CFR Part 262), which "hazardous wastes" are regulated as "hazardous materials" under the HMTA (§§ 171.3, 171.8 and 172.101 of the HMR). In addition, there is inadequate evidence in the record to determine to what extent "bulk liquids" subject to § 12804.3 are or are not hazardous materials as defined in the HMR.

The Federal role is exclusive in defining hazard classes and hazardous materials for purposes of regulating transportation thereof. IR–18, 52 FR 200 (Jan. 2, 1987); IR–18(Appeal), 53 FR 28850 (July 29, 1988); IR–19, *supra*; IR–19 (Appeal), *supra*; IR–20, *supra*; IR–21, 52 FR 37072 (Oct. 2, 1987); *Missouri Pacific RR Co.* v. *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987); *Union Pacific RR Co.* v. *City of Las Vegas*, CV–LV–85–932 HDM (D. Nev. 1987). As indicated in IR–6, *supra*, at 764, "the key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations."

Under these standards, the "hazardous materials" definitions in sections 25115 and 25117 of the California Health and Safety Code and § 12804.3 of the California Motor Vehicle Code are inconsistent with the HMTA and the HMR to the extent that any of them are used as a basis for regulating the transportation of hazardous materials under §§ 12804.1 and 12804.3 of the Vehicle Code and § 100.02 of the DMV regulations. Therefore, for purposes of this proceeding, § 100.02 of the DMV regulations is inconsistent with the HMTA and the HMR to the extent that its requirements are based upon definitions of hazardous materials (such as the foregoing statutory sections 25115, 25117 and 12804.3) not identical to those in the HMR.

2. *Information and Documentation Requirements*

Several commenters alleged that DMV's information and documentation requirements exceed those of the HMR and thus are inconsistent therewith. Particular mention was made of requirements in §§ 100.02 and 100.10 relating to out-of-state drivers. DMV's response is that its § 100.10(a) requirements apply only to employers which have been issued DMV employer numbers and that such employers include only those which employ California-licensed drivers. However, under § 100.02, DMV requires non-California drivers to possess either a Non-Resident Special Certificate issued by DMV or a certificate from his or her employer on a DMV-approved form indicating that the driver has met DMV's training requirements.

OHMT addressed the issue of information and documentation requirements in IR–19, *supra*:

In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them.

52 FR at 24408.

In general, therefore, requirements for information or documentation in excess of current Federal requirements, which are prerequisites to hazardous materials transportation, create potential unnecessary delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent. IR–2, 44 FR 75566, (Dec. 20, 1979), *appeal*, 45 FR 71881 (Oct. 30, 1980), *correction*, 45 FR 78838 (Nov. 20, 1980), IR–6, *supra*; IR–8, *supra*; IR–8(Appeal), *supra*; IR–15, *supra*; IR–15(Appeal), *supra*; IR–18, *supra*; IR–18(Appeal), *supra*; IR–19, *supra*; IR–19(Appeal), *supra*; IR–21, *supra*; *Chem-Nuclear Systems, Inc.* v. *City of Missoula*, CV 80–18–M (D. Mont. 1984). (The issue of unnecessary delay is discussed in greater detail in Section B.1. below.)

The DMV has authority under the CMVSA to prescribe information and documentation requirements with respect to commercial drivers' licenses (CDL's) for California domiciliaries and domiciliaries of those states (and foreign countries) which do not issue CDL's

under the CMVSA. States, however, are not required to implement CDL programs until April 1, 1992. 49 App. U.S.C. 2704(b)(3), 49 CFR 383.23. Thus, effective April 1, 1992, exercise of its CMVSA authority by DMV with respect to those individuals over which it has CMVSA jurisdiction will be consistent with the HMTA and the HMR. However, at that time, DMV's extension of such requirements to other individuals who have hazardous materials endorsements on other CDL's will be inconsistent with the HMTA and the HMR for the reasons set forth above. In addition, before April 1, 1992, DMV's imposition of its CDL requirements upon non-domiciliaries of California similarly is inconsistent with the HMTA and the HMR for the same reasons.

Here, DMV has extended its requirements for documentary evidence of trianing to individuals over which it has no jurisdiction under the CMVSA and also to individuals who are not required by the CMVSA to have CDL's until April 1, 1992. Such extension of DMV's requirements imposes upon perhaps a million or more motor vehicle operators transporting hazardous materials into, through or in California an additional documentary prerequisite to the transportation of hazardous materials being conducted in accordance with the CMVSA, the HMTA and the HMR. There is no *de minimis* exception to the "obstacle" test with respect to this or similar arguably *de minimis* documentation requirements. IR-8(Appeal), *supra*. As discussed below, the DMV requirements undermine uniformity of transportation regulation, create potential unnecessary delay, and, therefore, constitute obstacles to execution of the HMTA and the HMR.

DMV may, consistent with the HMTA and the HMR, impose its training-related documentation requirements on non-domiciliaries of California only after April 1, 1992, the CMVSA deadline for CDL implementation, and then only on non-domiciliaries who do not have hazardous materials endorsements on their CDL's. However, DMV's application of its documentation requirements to other persons constitutes an obstacle to execution of the HMTA and the HMR and, therefore, is inconsistent therewith.

3. Training Requirements

a. *General training requirements.* Several commenters alleged that DMV's training requirements in §§ 100.02 and 100.07 are inconsistent with the HMTA and the HMR. Specific HMR training requirements with which inconsistency is alleged are §§ 177.800 (general), 177.816 (flammable cryogenic liquids) and 177.825(d) (radioactive materials).

In response, DMV argues that it made every effort to avoid conflict with Federal regulations and imposition of unreasonable burdens on interstate commerce. It contends that Congressional enactment of the CMVSA acknowledged the need to test, and ensure the fitness of, commercial vehicle operators.

To date OHMT has promulgated few specific training requirements for motor carriers transporting hazardous materials. Section 177.800 of the HMR requires carriers "to thoroughly instruct employees in relation" to the HMR. Section 177.816 prescribes mandatory training for drivers of vehicles carrying flammable cryogenic liquids, describes the training required, and specifies training records which must be maintained. Finally, § 177.825(d) requires training for all persons transporting highway route controlled quantities of radioactive materials (HRCQ); it mandates biennial written training on specified topics and requires drivers to carry a certificate of training.

The general policy approach of the OHMT, therefore, is that the HMR contain minimal training requirements for the highway transportation of hazardous materials and that a state may impose more stringent training requirements on motor carrier operators so long as those requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that state and to individuals domiciled in other states who do not have hazardous materials endorsements on their CDL's. This approach recognizes the significant role which states properly have in the regulation of highway transportation of hazardous materials—particularly with regard to training requirements for their own licensed drivers.

In summary, OHMT views its training requirements for highway transportation of hazardous materials as minimum requirements which a state may exceed—so long as its greater requirements do not directly conflict with the HMR or apply to individuals not domiciled in that state (with limited exceptions discussed below). Thus, more stringent, more detailed or additional state training requirements applicable to domiciliaries of that state and not in direct conflict with the HMR are consistent with the HMTA and the HMR and, therefore, are not preempted by section 112(a) of the HMTA.

None of the DMV training requirements is in direct conflict with the present provisions of the HMR. As applied to domiciliaries of California, therefore, they are consistent with the HMTA and the HMR. Their inconsistency with respect to most non-domiciliaries is discussed below.

b. *Radioactive materials training requirements.* DOE and the Nuclear Group allege that the DMV regulations are inconsistent with § 177.825(d) of the HMR, which imposes training requirements on drivers of vehicles transporting HRCQ. They argue that the DMV rules are redundant, confusing, and burdensome and stress that fact that the DMV rules apply to carriers of radioactive materials other than HRCQ.

DMV contends that is broader training requirements are necessary, asserts that its radioactive materials training requirements are neither redundant nor duplicative, and states that it will recognize § 177.825(d) certificates as "equivalent certificates" under its regulations.

The issue of training requirements for transporters of radioactive materials was addressed by the Administrator of RSPA in deciding the appeal of IR-8:

> * * * the Department, through promulgation of 49 CFR § 177.825, has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation * * * training requirements other than * * * those identical to Federal requirements * * * are very likely to be inconsistent and thus preempted under § 112(a) of the HMTA.

52 FR at 13003.

The Administrator, however, did not consider this issue in the context of commercial driver licensing. This ruling recognizes the legitimate training requirements role which states have under the CMVSA. In addition, as indicated in the preceding discussion of training requirements in general, a state may impose additional training requirements on its own domiciliary motor vehicle operators so long as those requirements do not directly conflict with the HMR. The radioactive materials training requirements of the HMR are not sufficiently different from the other HMR training requirements to justify and different treatment of them.

Insofar as they relate to HRCQ, the DMV regulations do not directly conflict with the HMR. Insofar as they relate to other placarded radioactive materials, the DMV regulations are the type of non-conflicting additional training regulations which states may impose on their own domiciliaries through their CDL programs.

Therefore, as applied to California domiciliaries, the DMV regulations on

required training for transporters of radioactive materials are consistent with the HMTA and the HMR. Their applicability to non-domiciliaries of California is discussed below.

B. Consistency Issues Related to Applicability to Non-California Operators

1. General

Several commenters contend that the DMV regulations are inconsistent with the HMTA and the HMR insofar as they apply to non-domiciliaries of California. In particular, they focus on the § 100.02 requirement that out-of-state drivers possess either a Non-Resident Special Certificate issued by DMV or an employer's certification on a DMV-approved form and on the § 100.10 recordkeeping requirements applicable to non-California employers.

These commenters state that there are three million commercial vehicle drivers in the United States, contend that the DMV training and paperwork requirements for many of those drivers not domiciled in California will be time-consuming and burdensome, and present scenarios to demonstrate the types of delays which they foresee resulting from implementation of the California regulations. Their conclusion is that application of the DMV rules to non-domiciliaries of California will cause unnecessary delays in transportation in violation of § 177.853 of the HMR and thereby violate the "dual compliance" test for consistency.

In addition, two commenters contend that the DMV has failed to abide by the reciprocity requirements of the CMVSA, particularly 49 App. U.S.C. 2708(a)(14).

DMV and its supporting commenters respond that the DMV requirements really are not all that burdensome, that they create a standard superior to the lowest common denominator, and that they comply with the CMVSA reciprocity requirements by providing for reciprocity if the law of the other jurisdiction "pertainng to the license, endorsement, or certificate is at least equivalent to the requirements of [California]." As explained below, California cannot require such equivalency with respect to most non-domiciliaries of California. Contrary to assertions of the CTA, there has been no prior inconsistency ruling concerning any California requirements.

OHMT concludes that the DMV regulations are inconsistent with the HMR insofar as (1) they presently apply to operators of motor vehicles transporting hazardous materials who are domiciled in states other than California, and (2) on or after April 1, 1992, they apply to operators of motor vehicles transporting hazardous materials who are domiciled in states other than California which issue CDL's under the CMVSA and who have hazardous materials endorsements on their CDL's. The reasons for their inconsistency are that application of the DMV regulations to perhaps a million or more non-domiciliaries of California is likely to result in numerous unreasonable delays of transportation in violation of § 177.853 of the HMR and that such application conflicts with the uniform transportation regulatory goals of the HMTA and the HMR under the "obstacle" test. In addition, this option clarifies the relationship between, and the combined effects of, the HMTA and CMVSA in a rational and workable manner.

Delays in transportation of hazardous materials have been of critical concern beginning with the earliest inconsistency rulings. In IR–2, *supra*; transportation delays were addressed:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation.

44 FR at 75571. The threat of delays was discussed shortly thereafter in IR–3, 46 FR 18919 (Mar. 26, 1981), *appeal* 47 FR 18457 (Apr. 29, 1982):

> The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns.

46 FR at 18921.

Section 177.853 of the HMR contains two relevant provisions:

> (a) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination.
>
> (b) *Delivery at destination.* Shipments of hazardous materials which are refused by the consignees, or which can not be delivered within 48 hours after arrival at destination, must be promptly disposed of (1) by return to the shipper, if in proper shipping condition.
>
> * * * * *

In light of the massive numbers of hazardous materials transportation movements and drivers involved therewith, numerous unreasonable chronic and acute delays of such transportation are likely to occur if the DMV rules are applied to non-domiciliaries of California. The scenarios described above by the out-of-state industry commenters graphically illustrate the types of delays which are likely to occur once hazardous materials are in commerce if the DMV rules are applied to non-residents. Numerous non-California drivers unaware of the DMV requirements are likely to be stopped at the California border or in California and their hazardous materials movements significantly delayed because of their failure to comply with the DMV training and related documentation requirements. The likelihood of these delays renders application of the DMV rules to most non-domiciliaries of California inconsistent with § 177.853, the primary intent of which is to reduce the number of hazardous materials incidents by minimizing the time in transit of hazardous materials.

To the extent that the DMV is imposing documentary prerequisites for the transportation of hazardous materials upon persons over whom it does not have CDL licensing jurisdiction and upon other non-domiciliaries before they are required by the CMVSA to have CDL's and hazardous materials endorsements thereon, the DMV is creating unnecessary delays in the transportation of hazardous materials in commerce. Systemic "permitting" requirements, like DMV's documentary regulations, can cause chronic delays during transportation and have been found to be inconsistent with the HMR. IR–19, IR–19(Appeal), IR–21, IR–22, all *supra*. In addition, application of those requirements to motor vehicle operators arriving at the California border with hazardous materials and without the DMV-required documentation would result in numerous acute delays as a search was undertaken for a "qualified" driver. The likelihood of such acute delays results in the DMV requirements being inconsistent with § 177.853 of the HMR.

This situation is clearly distinguishable from that considered in *New Hampshire Motor Transport Assn.* v. *Flynn*, 751 F.2d 43 (1st Cir., 1984). In that case, the Court of Appeals for the First Circuit determined that New Hampshire's $15 single trip/$25 annual hazardous materials transportation license fee was consistent with the HMTA and that delays incident to paying those fees were not "significant enough to interfere with the federal speedy-transport mandate." A motor carrier merely had to pay a fee at the border during business hours or otherwise pay in advance. Given that there are a million or more non-California individual operators, a non-California motor carrier would have to either (1) ensure that its drivers obtain a California DMV Non-Resident Special Certificate (which involves testing in

California), or (2) issue to each of those drivers a California-approved form indicating that the driver has met California's training requirements and send a copy of the California DMV. In other words, a non-California motor carrier must be prepared either to send its drivers into California for training or to establish a California-approved training program and comply with California DMV recordkeeping requirements. It is unclear whether or how a self-employed trucker could be approved other than by being tested in California. The delays inherent in application of the DMV requirements to non-domiciliaries of California, therefore, are significant. That significance renders them inconsistent with § 177.853 of the HMR under the "dual compliance" test and also inconsistent with the uniform transportation regulatory goals of the HMTA and the HMR under the "obstacle" test.

As a matter of regulatory policy, OHMT is dovetailing its regulatory requirements and practices under the HMTA with those of the Federal Highway Administration (FHWA) under the CMVSA. The latter statute provides for a single commercial driver's license (CDL) for each driver of a commercial motor vehicle. Section 12009(a)(14) of that Act, 49 App. U.S.C. 2708(a)(14), and an implementing FHWA regulation, 49 CFR 383.73(b) (53 FR 27628, 27651; July 21, 1988), require states to extend reciprocity to CDL's issued by other states.

Under the FHWA rules (including 49 CFR 383.121 on hazardous materials endorsements) and this ruling (applying the "dual compliance" and "obstacle" tests for consistency with the HMTA and the HMR), a state may impose more stringent hazardous materials training requirements on its own domiciliary commercial motor vehicle operators than do Federal regulations so long as those requirements do not directly conflict with Federal regulations—but may not do so with respect to a motor vehicle operator who has been issued another state's CDL with a hazardous materials endorsement thereon and also may not do so with respect to a non-domiciliary operator prior to April 1, 1992. DMV erroneously asserts that it has authority to determine whether another state's hazardous materials endorsement requirements are adequate; in fact, the authority to make that determination rests with the FHWA under the CMVSA.

In summary, application of the DMV regulations to (1) domiciliaries of states other than California prior to April 1, 1992, and (2) to domiciliaries of states other than California who have hazardous materials endorsements on their CDL's in or after April 1, 1992, is inconsistent with the HMTA and the HMR under both the "obstacle" and "dual compliance" tests, and, therefore, such application is preempted.

2. Precedential Effects

Several commenters perceive the DMV regulations as harbingers of a Balkanized regulatory approach under which operators of vehicles carrying hazardous materials would be subject to 50 separate state hazardous materials licensing standards.

One quoted the legislative purpose for the HMTA preemptive provision: "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 93–1192, 93d Cong. 2d Sess. 37 (1974).

DMV, on the other hand, contends that it is implementing the CMVSA at the state level in a timely and effective manner and that it may be years before an effective national CDL program exists.

As discussed in IR–17, 51 FR 20925 (June 9, 1986), and in IR–17 (Appeal), 52 FR 36200 (Sept. 25, 1987), *correction* 52 FR 37399 (Oct. 6, 1987), OHMT and RSPA have never relied upon the potential cumulative effects of a requirement as a basis for finding inconsistency. They have, however, discussed such potential effects to illustrate adverse impacts of requirements already found inconsistent.

Likewise here, OHMT's ruling, that application of DMV's rules to most non-domiciliaries of California is inconsistent, should help to avoid a chaotic and burdensome situation in which numerous states would apply separate and possible conflicting requirements on persons engaged in the transportation of hazardous materials. Such a situation could result in a company having to develop training programs and issue training-related documents meeting the requirements of the 49 separate continental states.

VI. Summary of Ruling

For the foregoing reasons and on the basis of this record, I make the following findings. Sections 100.00–100.11 of Title 13, Chapter 1 of the California Administrative Code presently are inconsistent with the HMTA and the HMR to the extent that they apply to operators of motor vehicles transporting hazardous materials who are domiciled in states other than California. Effective April 1, 1992, those regulations will be inconsistent with the HMTA and the HMR to the extent that they apply to operators of motor vehicles transporting hazardous materials who are domiciled in states other than California which issue commercial drivers' licenses (CDL's) under the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701–2716) (CMVSA) and who have hazardous materials endorsements on their CDL's. In addition, § 100.02 of those regulations is inconsistent with the HMTA and the HMR to the extent that its requirements are based upon definitions of hazardous materials not identical to those in the HMR. Otherwise, those regulations, however, are consistent with the HMTA and the HMR. To the extent those regulations are inconsistent with the HMTA and the HMR, they are preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)).

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on April 17, 1989.

[FR Doc. 89–9555 Filed 4–20–89; 8:45 am]

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April 21, 1989

Part VI

Department of Transportation

Research and Special Programs Administration

Colorado Regulations on Transportation of Radioactive Materials; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-27; Docket IRA-44]

Colorado Regulations on Transportation of Radioactive Materials

Applicant: United States Department of Energy.

Statute and Regulations Affected: Colorado Public Utilities Commission Regulations for the Safe Transportation of Nuclear Materials by Motor Vehicle ("NT Regulations"), 4 CCR 723-25, issued under Colorado's Nuclear Materials Transportation Act of 1986 (CNMTA), C.R.S. section 40-2.2-101 *et seq.*

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) issued thereunder.

Mode Affected: Highway.

Issue Date: April 17, 1989.

Ruling: No opinion is rendered concerning the consistency of any provisions of Colorado's Nuclear Materials Transportation Act of 1986 (CNMTA), C.R.S. section 40-2.2-101 *et seq.* Colorado Public Utilities Commission (CPUC) Regulations NT 3(a), 5(c)(5), 8(a), 8(b), 8(c) and 8(f); the first seven words of CPUC Regulation NT 8(d); and Appendix 8-A to the CPUC Regulations are inconsistent with the HMTA and the HMR. CPUC Regulations NT 4, 5 (except for 5(c)(5)) and 6 are consistent to the extent they relate to other consistent requirements; otherwise they are inconsistent. CPUC Regulation NT 9 is inconsistent to the extent it requires different or more prenotifications than the HMR. CPUC Regulation NT 8(d), except for its first seven words, and CPUC Regulation NT 8(e) are consistent with the HMTA and the HMR. No opinion is rendered concerning the consistency of any other CPUC regulations.

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether the Colorado Public Utilities Commission Regulations for the Safe Transportation of Nuclear Materials by Motor Vehicle ("NT Regulations"), 4 CCR 723-25, issued under the CNMTA, C.R.S. section 40-2.22-101 *et seq.*, are inconsistent with the HMTA and the HMR and thus preempted by Section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201-107.209.

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I. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215-107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. These include *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-

Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

II. The Application for Inconsistency Ruling

On July 25, 1988, Lawrence H. Harmon, Director of the Transportation Management Division, Office of Defense Waste and Transportation Management, U.S. Department of Energy (DOE), filed an application on behalf of DOE for an inconsistency ruling. That application specifically requested a finding that certain provisions of Colorado's regulations implementing the Colorado Nuclear Materials Transportation Act of 1986 (CNMTA) be determined to be inconsistent with the HMTA and the HMR.

DOE alleges that the CNMTA and its implementing regulations apply to carriers transporting through Colorado highway route controlled quantities of radioactive material (HRCQ) as defined in 49 CFR 173.403(1). DOE states that it is the Federal agency responsible for radioactive materials transportation to which the Colorado regulations pertain under the following applicability language:

> * * * radioactive materials being transported to the waste isolation pilot plant in New Mexico and radioactive materials along transported to any facility provided pursuant to section 135 of the federal 'Nuclear Waste Policy Act of 1982', 42 U.S.C. 10101, *et seq.*, or any repository licensed by the United States Nuclear Regulatory Commission that is used for the permanent, deep, geologic disposal of high-level radioactive waste and spent nuclear fuel.

DOE contends that the Colorado regulations under the CNMTA are inconsistent with the HMR insofar as they impose information and documentation requirements, classify hazardous materials, impose training requirements, specify permit requirements and impose penalties and fees.

With respect to information and documentation requirements, DOE alleges that the following Colorado regulations exceed HMR requirements and, therefore, are inconsistent with the HMR:

(1) *NT 3(a),* which requires that the telephone number of the Colorado State Patrol (CSP) be carried with the other shipping papers within the cab of every motor vehicle with instructions to the driver or person in charge of the vehicle to call that number in the event of any incident, accident, or breakdown of equipment;

(2) *NT 5(c)(5),* which requires that the original vehicle inspection report and any subsequent inspection report shall be retained in the vehicle while transporting nuclear materials within the State;

(3) *NT 8(f),* which requires that each person transporting nuclear material within the State shall carry in the motor vehicle a copy of a nuclear materials transportation permit issued by the Colorado Public Utilities Commission.

(4) Appendix 8–A to the Colorado rules, which requires that the permit applicant supply additional information in order to receive a permit, including:

(a) A copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous;

(b) Proof that the applicant has obtained liability insurance required by Federal rules;

(c) A nuclear incident plan that demonstrates applicant's ability to respond to a nuclear incident, which must include provisions for removal of the vehicle and its cargo, prevention or minimization of releases of radioactivity, and decontamination of the environment; and

(d) The carrier's plan for replacement or repair of equipment that has been placed out of service by a Port of Entry or State Patrol officer after inspection or has been inoperative due to mechanical failure or other circumstance.

(5) *NT 9,* which contains prenotification requirements in excess of those required by the HMR.

In addition, DOE asserts that Colorado Rule NT 9 applies the Nuclear Regulatory Commission (NRC) regulation for prenotification of spent fuel shipments, 10 CFR 173.73(f), to all HRCQ shipments—instead of the less restrictive NRC regulation applicable to non-spent fuel HRCQ shipments. The HMR (49 CFR 173.22) incorporates the NRC requirements. DOE contends that Rule NT 9 thereby establishes a classification of hazardous materials that impermissibly differs from that of the HMR.

In the area of training, DOE alleges that Appendix 8–A to the Colorado regulations constitutes an inconsistent training requirement. DOE argues that Appendix 8–A's requirement that each permit applicant supply a copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous, is inconsistent with 49 CFR 177.825.

Concerning Colorado's permit requirements, DOE argues that they are inconsistent because of their extensive information requirements and their vague and discretionary standards for determining when a permit may be issued. DOE cites the required submission of a nuclear incident plan that demonstrates the applicant's ability to respond to a nuclear incident as an example of a vague standard for permit issuance. DOE further contends that the permit requirements ban transportation of HRCQ in compliance with the HMTA and the HMR unless a permit is obtained and create the likelihood of diversion of transportation to other jurisdictions.

Finally, DOE contends that the Colorado regulations providing for civil penalties for violations of the regulations (Rule NT 4) and providing annual and single-trip permit fees (Rules NT 8 (c), (d) and (e)) are inconsistent insofar as they relate to inconsistent regulations or support an inconsistent permit system.

III. Public Comments

A. General

On August 11, 1988, OHMT published a Public Notice and Invitation to Comment (53 FR 30418) soliciting public comments on DOE's application. Comments opposing a finding of consistency were filed by the Electric Utility Companies' Nuclear Transportation Group (NTG). Comments favoring a finding of consistency were filed by the Western Governors' Association (WGA) and the State of Nevada Department of Transportation (Nevada). Rebuttal comments, replying to the WGA comments, were filed by DOE and NTG.

Unfortunately, the State of Colorado (State) has decided not to participate in this proceeding. Instead the State, on September 22, 1988, advised OHMT that it would not participate because it expected to litigate all relevant issues in Federal court and did not wish to unnecessarily incur legal expenses. Further, the State requested that this inconsistency proceeding be stayed or DOE's petition dismissed. Simultaneously a similar request was sent to the Secretary of Transportation by Senator Tim Wirth and Representatives Patricia Schroeder, David Skaggs and Ben Nighthorse Campbell of the Colorado Congressional Delegation. The basis of their request was that the State was pursuing this matter in court.

On October 19, 1988, the Secretary of Transportation responded to the Senator and three representatives and declined to direct that this proceeding be stayed

or the DOE petition dismissed. The Secretary's letter set forth the rationale for this decision in the following language:

> This department's Inconsistency Ruling process provides a forum for differing views on the consistency of State and local requirements with the Federal HMTA and concomitant regulations. The DOT, which has been designated as the responsible government agency to administer the HMTA, is knowledgeable concerning the competing interests of the parties and committed to carrying out the intent of Congress in issuing these advisory opinions.
>
> Twenty-four advisory Inconsistency Rulings have been issued in the past decade. These rulings provide a consistent, precedential body of opinions which have been deemed helpful to courts, State and local governments, the transportation industry and other parties interested in HMTA preemption issues. It is not unusual for a court case to be pending while an Inconsistency Ruling application is filed. In fact, several Inconsistency Rulings have been issued while cases were pending in court. Moreover, in these cases the courts considered the Department's views before rendering their decisions. It has long been the Department's policy to rule on petitions (such as DOE's) in a timely manner.
>
> In this instance, DOE has petitioned the Department and, consistent with prior policy and practice, we intend to issue a decision in a timely manner. In fact, should the DOT ruling be rendered prior to the Court's consideration of the case, it may be helpful to the Federal Judge determining HMTA preemption issues.

Thereafter, on October 31, 1988, I responded to the September 22 letter from the State and denied its request that the DOE application be dismissed or this inconsistency proceeding be stayed.

B. Comments Supporting Consistency

The Western Governors' Association (WGA) submitted substantive comments supporting the consistency of the CNMTA and the Colorado PUC's implementing regulations. Nevada's comment merely endorsed the WGA comments.

WGA cites language in the CNMTA, stating that the PUC regulations thereunder "shall not be inconsistent with any Federal rule or regulation" regarding nuclear materials transportation, as evidence that the CNMTA is consistent with the HMTA.

WGA states that section 105 of the CNMTA authorizes the PUC to adopt rules for "the safe transportation of nuclear materials by motor vehicle" and argues that a similar law was found consistent with the HMTA in Inconsistency Ruling No. IR–12 (IR–12), 49 FR 46650 (Nov. 27, 1984).

With respect to requirements for inspections under section 103 of the CNMTA and PUC Rule NT 5, WGA contends that such requirements are consistent because the inspections are conducted to determine compliance with the HMR and Federal motor carrier safety rules. It cites several inconsistency rulings for the proposition that state inspections for compliance with Federal regulations and consistent state regulations are a valid exercise of state police power. IR–2, 43 FR 75566 (Dec. 20, 1979), *appeal*, 45 FR 71881 (Oct. 30, 1980), *correction*, 45 FR 76838 (Nov. 20, 1980); IR–8, 49 FR 46637 (Nov. 27, 1984), *appeal*, 52 FR 13000 (Apr. 20, 1987); IR–15, 49 FR 46660 (Nov. 27, 1984), *appeal*, 52 FR 13062 (Apr. 20, 1987); IR–17, 51 FR 20925 (June 9, 1986), *appeal*, 52 FR 36200 (Sept. 25, 1987), *correction*, 52 FR 37399 (Oct. 6, 1987). WGA quotes the following language from IR–8:

> Far from being an obstacle to the accomplishment of the HMTA, State enforcement of Federal and consistent State regulations concerning hazardous materials transportation safety is a critical element of a regulatory system of national applicability.

49 FR 46644.

Similarly, WGA asserts that PUC Rule NT 6, stating that a vehicle, driver or cargo can be placed out-of-service for violations of the HMR or Federal motor carrier safety regulations, is consistent with the HMTA. It alleges that no vehicles in compliance with Federal laws are denied entry to the State. WGA states that IR–17, *supra*, held that restricting shipments that are in violation of Federal safety laws "is precisely the sort of state action which the drafters of the HMTA intended and which the [U.S. DOT] endorses as sound enforcement policy." In summary, WGA argues that the State's inspections are to enforce Federal regulations and thus are consistent with the HMTA.

As to civil and criminal penalties under sections 107–109 of the CNMTA, WGA states that they are valid tools for enforcing Federal and consistent state regulations, are neither extreme nor arbitrary, and thus are consistent. WGA cites IR–3, 46 FR 76838 (Mar. 26, 1981), *appeal*, 47 FR 18457 (Apr. 29, 1982), for the proposition that a mere difference in penalty provisions between state and Federal penalties is not a basis for finding inconsistency.

The final issue addressed by WGA is the State's shipment fees under section 202 of the CNMTA and PUC Rule NT–8. WGA contests DOE's assertion that the shipment fees are inconsistent because they support an inconsistent permit system. WGA says that the system and the fees are not inextricably linked.

WGA states:

> When the merits of the fee are examined separately, the fee is found to be consistent with federal law in that: the fee does not delay the transportation of nuclear materials in interstate commerce; no evidence was introduced that the fee results in rerouting to avoid Colorado; the fee is used to compensate the state for the reasonable costs imposed by the transportation of nuclear materials within the state's borders; and there is no evidence presented showing that the size of the fee is disproportionate to the costs imposed upon the state.

WGA also points to the flexibility concerning alternate means of payment of the shipping fees: (1) Seven days in advance by mail, (2) at the time and place of entering the State, or (3) by monthly payments when carriers are making regular shipments. It also points to the deposit of the funds in a nuclear materials transportation fund (section 212 of the CNMTA) and their subsequent use to finance the costs of administering the CNMTA, including inspections (section 106), enforcement of Federal rules (sections 107–110), and preparation for nuclear incidents (section 102). WGA contends that all these activities are valid exercises of state police power consistent with the HMTA.

Furthermore, WGA distinguishes an earlier inconsistency ruling, IR–15, *supra*, in which a similar fee was found inconsistent:

> Furthermore, unlike the Vermont fee which was found inconsistent by DOT in IR–15, the Colorado fee is not being used to support state programs that unnecessarily duplicate federal resources. In that case Vermont chose to ignore federal emergency response resources. Colorado has fully availed itself of the emergency response training offered by DOE for future shipments of transuranic waste to the Waste Isolation Pilot Plant (WIPP) in New Mexico Under PUC Rule NT–5, Colorado's inspection program is required to be operated in accordance with the standards developed by the Commercial Vehicle Safety Alliance—further evidence that Colorado is aware of other transportation resources and is fully coordinating its nuclear materials transportation safety program with these resources.

WGA concludes its comments by urging that the Colorado Act and PUC regulations be found consistent with the HMTA because they supplement, rather than supplant, the HMR.

C. Comments Opposing Consistency

NTG filed extensive comments and rebuttal comments contending that several provisions of the CNMTA and corresponding PUC regulations are inconsistent with the HMTA and the HMR under the "obstacle" test. It stresses the significance of this inconsistency ruling because of its probable precedential effect on states'

regulation of HRCQ shipments to DOE's Waste Isolation Pilot Plant (WIPP) in New Mexico and later HRCQ shipments to a permanent repository under the Nuclear Waste Policy Act of 1982, as amended by the Nuclear Waste Policy Amendments of 1987 (NWPA), 42 U.S.C. 10101.

NTG specifically alleges that the State is imposing inconsistent requirements with respect to permitting, information and documentation, and prenotification and enforcing them with inconsistent penalty provisions.

Concerning the permitting issue, NTG quotes PUC Rule NT 8: "No carrier shall transport nuclear materials into, within, through, or out of the State of Colorado until a permit authorizing such transportation has been issued by the CPUC or its designee." It explains that NT 8 imposes a $500 annual permit fee and a $200 per shipment fee. It also states that the permit application requires the applicant's driver training program, proof-of-insurance, a nuclear incident clean-up plan, and a plan for replacement or repair of equipment when required.

NTG cites IR-18, 52 FR 200 (Jan. 2, 1987), *appeal* 53 FR 28850 (July 29, 1988), for the proposition that state and local permit requirements for the transportation of radioactive materials generally are inconsistent with the HMTA and the HMR. It also contends that IR-18 supports an inconsistency finding in this instance because Colorado requires more information than the HMR and because its CNMTA provides no permit processing period.

NTG advances separate arguments against the consistency of each of three of the permit application provisions. It cites IR-2, *supra;* IR-18, *supra;* IR-19, 52 FR 24404 (June 30, 1987), *correction* 52 FR 29468 (Aug. 7, 1987), *appeal* 53 FR 11600 (Apr. 7, 1988), for the proposition that emergency response is a state and local responsibility and that an emergency response plan cannot be required of a carrier. It argues that requiring proof of insurance is inconsistent under IR-2, IR-8, IR-8(Appeal); IR-15, IR-15(Appeal), and IR-19, all *supra.* It further contends that requiring submission of a driver training program is inconsistent with § 177.825 of the HMR and cites IR-8(Appeal) as authority for that proposition.

After concluding that the CNMTA permit requirements, as a whole, are inconsistent under the "obstacle" test, NTG argues that, under IR-15, IR-17, and IR-17(Appeal), all *supra,* the permit fees are inconsistent because they are designed to fund or are related to an inconsistent state regulatory program.

In addition, NTG asserts that requirements to carry in the cab a Colorado State Patrol phone number with calling instructions (Rule NT 3), to carry a copy of the permit (Rule NT 8(f)), and to carry vehicle inspection reports which exceed Federal requirements and thus are inconsistent under IR-8(Appeal), *supra.*

Concerning the State's prenotification requirements, NTG alleges that Rule NT 9 fails to maintain the Federal differentiation (10 CFR 71.97 and 73.37(f)) between spent fuel shipments and other HRCQ shipments. In addition, it asserts that the information required under Rule NT 9 differs from that required by 10 CFR 71.97 and, therefore, is *per se* inconsistent under IR-14, 49 FR 46656 (Nov. 27, 1984); IR-15, *supra;* IR-16, 50 FR 20872 (May 20, 1985) and IR-18, *supra.*

Concerning the civil penalty provisions of Rule NT 4, NTG contends that those provisions are inconsistent to the extent that any provisions of the CNMTA are found inconsistent. In support of that assertion, it cites IR-18, *supra,* and *Jersey Central Power & Light Co.* v. *Township of Lacey,* 772 F.2d 1103 (3d Cir. 1985).

In summary, NTG asserts that the following Colorado rules and the corresponding CNMTA provisions are inconsistent with the HMTA and the HMR under the obstacle test:

NT 3(a)
NT 5(c)(5)
NT 8 and Appendix 8-A
NT 9
NT 4 (as applied to the above provisions).

NTG also filed reply comments to the WGA comments. It asserts that DOE's application for this inconsistency ruling fosters a cooperative Federal-state relationship more effectively than litigation. It points out that WGA addressed only three aspects of the CNMTA, inspections, penalties and shipment fees, and argues that DOT may conclude that the WGA does not take issue with DOE and NTG arguments concerning the alleged inconsistency of many other CNMTA provisions. It also contends that the CNMTA language declaring that implementing regulations "shall not be inconsistent with any federal rule or regulation" cannot prevent a full examination of the State's requirements to determine their consistency.

In response to WGA's discussion of the CNMTA's inspection provisions, NTG points out that DOE did not seek a ruling on the consistency of those provisions. Thus, NTG takes no position on those inspection provisions.

NTG agrees with WGA's statement that reasonable penalty provisions for enforcing consistent state requirements are themselves consistent. However, NTG points to the State PSC's ability to impose fines of up to $10,000 per day for a continuing violation, argues that this amount could be extremely excessive, and concludes that the State's failure to explain its derivation or assessment of penalties would justify OHMT in assuming that maximum penalties would be assessed when it determines the reasonableness of the State's penalties.

Concerning shipment fees, NTG disagrees with the WGA assertion that the fees are not inextricably linked to the permit system. It says that section 40-2.2-202 of the CNMTA ties the two together and that the fees are designed, in part, to fund the permitting program. It states that Colorado has not provided detail on the use of the fees, that prior inconsistency rulings result in very limited areas for state and local transportation requirements for radioactive materials transportation, and disagrees with WGA's contention that parties challenging the fees' consistency have the burden of proof (given the virtually complete occupation of the field of radioactive materials transportation by the HMTA and the HMR). Finally, NTG cites language in IR-17 (Appeal), *supra,* indicating that fees, such as those involved in IR-15, *supra,* associated with inconsistent permitting systems themselves are inconsistent.

DOE also submitted comments responding to those of WGA. DOE describes its cooperative effort with states concerning its radioactive materials transportation. It cites an Office of Technology Assessment Report indicating that NRC specifications used for HRCQ shipments provide a very high level of public protection— "much greater than that afforded in any other current hazardous materials shipping activity." In light of that finding, DOE argues that Colorado has no rational safety basis for its $500 permit fee per vehicle and $200 per shipment fee for HRCQ shipments when its recently-promulgated fee schedule for other hazardous materials transported by motor vehicle provides for no per shipment fee and for annual fees as follows:

No. of vehicles	Fees
1-5	$10
6-10	25
11-50	125
51-100	200
101-300	350

No. of vehicles	Fees
Over 300	400

Concerning the issue of inspection provisions, DOE states that its application did not raise the issue of the consistency of those provisions.

Concerning the penalty provisions, DOE states that it objects only to the imposition of penalties insofar as they apply to violations of inconsistent rules.

Concerning the State's permit and fee requirements, DOE disagrees with WGA's comments that the permit and fees are separable and that the fees do not cause delay or support an inconsistent program. DOE argues as follows:

> The fee and permit are not separable. Colorado rule NT–6 addresses permit requirements and NT–8(c) is entitled "permit fees". No permit can be obtained without payment of an annual permit fee of $500. NT–8(d) imposes a $200 per shipment fee in addition to the annual permit fee. If a carrier entering the State does not have a permit, a single-trip permit may be obtained pursuant to NT–8(e). But NT–8(e) provides that the single trip fee "shall be the same as indicated in NT–8 (c) and (d) here." Thus, based on the clear and explicit language of the Colorado rules, the annual, per shipment, and single trip permits are inextricably linked to fees.
>
> The WGA claims that since the fee can be paid seven days in advance by mail, and since single shipment permits can be obtained, no delay in shipment will result. There are two flaws in this reasoning. First, in order to obtain a permit, information additional to that required by the federal rules must be supplied (Appendix 8–A to the Colorado regulations) and the Colorado Public Utilities Commission has broad discretion in determining whether the permit requirements have been met. There is no deadline by which Colorado must respond to a permit applicant. Therefore, significant delay in awaiting permit approval easily could occur. Secondly, the single trip permit may be obtained only if the carrier can provide $700. If the carrier cannot provide $700, and transports nonetheless, the carrier is subject to both civil penalties (NT–4) and criminal penalties (Colorado Revised Statutes, 40–2.2–107).
>
> The obvious result of such a system is redirection of shipments away from Colorado whenever possible. As recognized in IR–15, such diversion would reduce the State's exposure to the risk of HRCQ transportation at the expense of neighboring jurisdictions. If other jurisdictions follow suit and enact a similar permit and fee system, "[t]he proliferation of escalating fees, as States sought to finance elaborate response systems and/or to reduce their exposure to radioactive materials transportation, would amount to a system of internal tariff barriers which would completely undermine HM–164 [the federal regulation] . . . ". IR–15, 49 FR 46664 (November 27, 1984).

DOE concludes that the State's permitting system is inconsistent with the HMTA and the HMR under the "obstacle" test and constitutes a prohibited routing rule under Appendix A to 49 CFR Part 177 because it would create unnecessary delays.

IV. Ruling

A. Inspection Requirements

WGA's comments focused on the desirability of states' carrying out effective hazardous materials transportation inspection programs. DOE, however, has not challenged any of the State's inspection requirements in its inconsistency ruling application.

It is clear, nevertheless, that state inspection requirements relating to Federal and consistent state requirements are encouraged by OHMT and are consistent with the HMTA and the HMR. IR–2, IR–8, IR–15, IR–17, all *supra*; IR–20, 52 FR 24396 (June 30, 1987), *correction*, 52 FR 29468 (Aug. 7, 1987). On the other hand, state inspection requirements relating to inconsistent requirements are themselves inconsistent. IR–20, *supra*; IR–21, 52 FR 37072 (Oct. 2, 1987); *appeal*, 53 FR 46735 (Nov. 18, 1988).

Accordingly, the State's inspection requirements (Colorado PUC Rules NT 5 and 6) generally are consistent to the extent, but only to the extent, they relate to Federal and consistent State requirements. (But see discussion below of Rule NT 5(c)(5).)

B. Information and Documentation Requirements

DOE's application contains unrebutted assertions that the following State information and documentation requirements exceed HMR requirements and thus are inconsistent:

(1) *NT 3(a)*, which requires that the telephone number of the Colorado State Patrol (CSP) be carried with the other shipping papers within the cab of every motor vehicle with instructions to the driver or person in charge of the vehicle to call that number in the event of any incident, accident, or breakdown of equipment;

(2) *NT 5(c)(5)*, which requires that the original vehicle inspection report and any subsequent inspection report shall be retained in the vehicle while transporting nuclear materials within the State;

(3) *NT 8(f)*, which requires that each person transporting nuclear material within the State shall carry in the motor vehicle a copy of a nuclear materials transportation permit issued by the Colorado Public Utilities Commission.

(4) *Appendix 8–A* to the CPUC rules, which requires that the permit applicant supply additional information in order to obtain a permit, including:

(a) a copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous;

(b) proof that the applicant has obtained liability insurance required by Federal rules;

(c) a nuclear incident plan that demonstrates applicant's ability to respond to a nuclear incident, which must include provisions for removal of the vehicle and its cargo, prevention or minimization of releases of radioactivity, and decontamination of the environment; and

(d) the carrier's plan for replacement or repair of equipment that has been placed out of service by a Port of Entry or State Patrol officer after inspection or has been inoperative due to mechanical failure or other circumstance.

(5) *NT 9*, which allegedly contains prenotification requirements in excess of those required by the HMR.

All of the above information, in fact, is in excess of that required by the HMR, including that required by Nuclear Regulatory Commission (NRC) regulations incorporated into the HMR by 49 CFR 173.22.

Requirements for information or documentation in excess of the HMR create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent. IR–6, 48 FR 760 (Jan. 6, 1983); IR–2, IR–6, IR–8, IR–8(Appeal), IR–15, IR–15(Appeal), IR–18, IR–18(Appeal), IR–19, IRA–19(Appeal), IR–21, all *supra; Chem-Nuclear Systems, Inc.* v. *City of Missoula*, CV 80–18–M (D. Mont. 1984). Also, there is no *de minimis* exception to the "obstacle" test for such requirements because thousands of jurisdictions could impose *de minimis* information requirements.

These principles are particularly applicable with respect to the intensely regulated field of radioactive materials transportation. RSPA's Administrator considered such requirements in that context in IR–8(Appeal), *supra:*

> DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent.

52 FR 13004; see also IR–15(Appeal), *supra*.

State and local radioactive materials transportation information and documentation requirements which have

been found inconsistent with the HMR include the following: Emergency response information requirements; multiple submissions of the same information (e.g., submission to states of NRC approvals and licenses); transportation route plans; shipment-specific information; and information on possible alternate routes, proposed means of conveyance, estimated date and time of departure, emergency response and recovery plans, attestations concerning safety inspections, and certification of compliance with laws and regulations (the latter being the same as required on DOT shipping papers). IR–8, IR–8(Appeal), IR–15, IR–15(Appeal), IR–19, all *supra*.

In summary, the field of radioactive materials transportation information and documentation requirements has been preempted by the Federal Government (RSPA and NRC, with the latter's requirements having been incorporated into the former's HMR). Therefore, the State's information and documentation requirements identified by DOE fail the "obstacle" test and are inconsistent with the HMTA and the HMR.

With respect to some of the areas addressed by its information requirements, however, the State may have other consistent regulatory tools at its disposal. For example, it may accident/incident reports for emergency response purposes. IR–2, *supra;* IR–3, *supra; National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983); 49 CFR Part 177, Appendix A.

In summary, RSPA has determined that current information and documentation requirements concerning radioactive materials transportation are sufficient to meet the needs of safe transportation. However, should RSPA, through its own initiative or in response to an appropriate petition for rulemaking, decide that those requirements should be enhanced, RSPA will undertake appropriate rulemaking.

C. Prenotification Requirements

DOE contends that Colorado Rule NT 9 applies the NRC regulation for prenotification of spent fuel shipments, 10 CFR 173.73(f), to all HRCQ shipments, not just spent fuel shipments. As to non-spent fuel HRCQ shipments, therefore, the State requires greater prenotification than the NRC regulations, which are incorporated into the HMR by 49 CFR 173.22.

DOE's objection to the State's prenotification requirement (in addition to the above-discussed informational requirement objection) is that this requirement creates a classification of hazardous materials impermissibly different from the HMR. However, it is not necessary to discuss the classification issue in order to determine the consistency of the State's prenotification requirement.

Local requirements for advance notice of hazardous materials transportation have the potential to delay and redirect traffic and thus are inconsistent. IR–6, *supra.* Although state notice requirements concerning radioactive materials shipment schedule changes identical to NRC requirements are consistent (IR–8, *supra*), notice requirements concerning schedules or schedule changes for such shipments different from NRC requirements are inconsistent. IR–8(Appeal), IR–14, IR–15, IR–16, IR–18, IR–18(Appeal), *Chem-Nuclear Systems, Inc.* v. *City of Missoula,* all *supra.*

OHMT's total occupation of the prenotification field was explicitly stated in IR–8(Appeal), *supra*:

> Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted.

52 FR at 13005.

The State's prenotification requirements differ from, and are more burdensome than, the radioactive materials prenotification requirements in §§ 173.22 and 177.825 of the HMR and 10 CFR 71.97 and 73.97 (NRC regulations incorporated by reference in § 173.22 of the HMR). CPUC Rule NT 9 requires more information about more shipments and thereby creates confusion and undermines the likelihood of proper compliance with the HMR prenotification requirements.

Therefore, the State's Rule NT 9 is inconsistent with the HMR to the extent that it exceeds NRC requirements by requiring greater prenotification concerning non-spent fuel HRCQ radioactive materials shipments.

D. Training Requirements

DOE contends that Appendix 8–A (Application for Permit) to the Colorado regulations constitutes an inconsistent training requirement insofar as it requires a motor carrier training program describing preparation for mountain driving where a mountainous route is to be used.

Again, this particular topic previously was addressed by RSPA's Administrator:

> * * * the Department, through promulgation of 49 CFR § 177.825, has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation * * * training requirements other than * * * those identical to Federal requirements * * * are very likely to be inconsistent and thus preempted under § 112(a) of the HMTA.

IR–8(Appeal)), *supra,* at 13003.

Although Colorado, being a mountainous state, understandably may wish to require motor carrier training for mountain driving, its imposition of such a requirement on transporters of certain radioactive materials constitutes an obstacle to implementation of the HMTA and the HMR. Many other mountainous states or localities may wish to impose similar requirements, and states or localities with other geograpical characteristics (e.g., desert) may wish to impose training requirements tailored to those conditions. Such requirements, when applied to drivers of motor vehicles carrying radioactive materials, would be inconsistent.

State or local governments, like Colorado, wanting to impose such requirements have two options available to them. First, they may file a rulemaking petition with OHMT or the NRC requesting that the HMR or the NRC regulations be amended to impose such a requirement. Second, they may apply to OHMT, under 9 CFR 107.215, for a non-preemption determination (i.e., a waiver of preemption). Any such applications will be given full consideration by DOT.

In summary, the requirement in Appendix 8–A to the Colorado regulations requiring a training program for motor carriers of certain radioactive materials fails the "obstacle" test and thus is inconsistent with the HMTA and the HMR.

E. Permit Requirements

DOE contends that the State's permit requirements (Rule NT 8(a) and (b) and Appendix 8–A to the Rules) are inconsistent because: (1) They ban transportation without a permit of HRCQ shipments which are in compliance with the HMTA and the HMR, (2) create the likelihood of

diversion of transportation to other jurisdictions, (3) include extensive information requirements, and (4) contain vague and discretionary standards for determining when a permit will be issued (e.g., the required submission of a nuclear incident plan demonstrating the applicant's ability to respond to a nuclear incident). DOE's contention is correct for all of the reasons cited.

Generally, state or local hazardous materials transportation permits *per se* are not inconsistent, and their consistency depends upon their specific requirements. IR–2, IR–3, IR–20, all *supra*. However, because the field of radioactive materials transportation safety is so intensively regulated and almost completely occupied by the HMTA and the HMR, state and local requirements are limited to : (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, radioactive materials transportation permits generally are inconsistent. IR–8; IR–8(Appeal); IR–10; IR–11; IR–12; IR–13; IR–15; IR–18; IR–18(Appeal); IR–19; IR–19(Appeal); IR–20; IR–21; IR–21(Appeal), all *supra*.

The permit system at issue here has many similarities to the Nevada permit system (applicable to radioactive and explosive materials) found inconsistent in IR–19 and IR–19 (Appeal), both *supra*. Like that system, Colorado's permit system prohibits certain transportation without a permit regardless of whether that transportation is in compliance with the HMTA and the HMR, applies to selected hazardous materials, involves extensive information and documentation requirements, and contains considerable discretion concerning permit issuance. As was stated in IR–19, "Cumulatively, these factors constitute unauthorized prior restraints in shipments of * * * hazardous materials that are presumptively safe based on their compliance with Federal regulations." 52 FR at 24407. The quoted language was applied in IR–19 to permits for *nonradioactive* hazardous materials transportation, a field which, unlike *radioactive* hazardous materials transportation, has not been virtually completely ocupied by the HMR.

I am aware of a contrary view concerning the Nevada permitting system at issue in IR–19 and IR–19(Appeal), that is, a four-page unpublished U.S. District Court opinion upholding the consistency of that system. *Southern Pacific Transportation Co.* v. *Public Service Commission of Nevada*, CV–N–86–444–BRT (D. Nev. 1988). That Court cited no judicial or other precedent for it conclusions, did not fully address the issues discussed in the two DOT opinions, and did not discuss or apply the two-pronged test for consistency set forth in 49 CFR 107.209(c). Thus, I do not find that decision persuasive in considering the consistency of the Colorado permit system with the HMTA and the HRM.

For the foregoing reasons, CPUC NT 8(a) and (b) and Appendix B–A to the CPUC Rules are inconsistent with the HMTA and the HMR.

F. Civil Penalties

DOE contends that CPUC Rule NT 4, providing for civil penalties for violations of the CPUC regulations, is consistent insofar as if relates to inconsistent regulations. NTG supports that contention and also argues that civil penalties imposed under the Rule could be excessive.

Civil penalties for violations of consistent state or local hazardous materials transportation laws or regulations are consistent with the HMTA and the HMR unless they are so extreme or arbitrarily applied as to cause the rerouting or unreasonable delay of shipments. Mere differences in amount do not require a finding of inconsistency. IR–3, *supra*. However, civil penalties for violations of inconsistent state or local hazardous materials transportation laws or regulations are themselves inconsistent with the HMTA and the HMR under the "obstacle" test. IR–18, *supra*; IR–18(Appeal), *supra*; *Jersey Central Power & Light Co.* v. *Township of Lacey*. 772 F.2d 1103 (3rd Cir. 1985).

Therefore, CPUC Rule NT 4 is consistent with the HMTA and the HMR insofar as it applies to violations of inconsistent CPUC regulations. The civil penalties under CPUC Rule NT 4 which are similar in amount to those under the MHTA and the HMR, have not been demonstrated to be so arbitrary or excessive as to cause diversion or significant delays of hazardous materials transportation. Therefore, CPUC Rule NT 4 is consistent with the HMTA and the HMR insofar as it applies to violations of consistent CPUC regulations; otherwise it is inconsistent.

G. Fee Requirements

DOE contends that the State's permit fees and shipment fees (CPUC Rules NT 8(c), (d) and (e)) are inconsistent because they support an inconsistent permit system and discriminate against radioactive materials—as compared to other hazardous materials.

Reasonable state or local fees on hazardous materials transportation to fund consistent governmental activities are consistent with the HMTA and the HMR. IR–17, *supra*; IR–17 (Appeal), *supra; New Hampshire Motor Transport Assn.* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984). However, state or local fees which are unreasonably high or are related to inconsistent governmental activities are inconsistent. IR–11, 49 FR 46647 (Nov. 27, 1984); IR–13, 49 FR 46653 (Nov. 27, 1984); IR–15, *supra*; IR–18 (Appeal), *supra*; IR–19, *supra; New Hampshire Motor Transport Assn.* v. *Flynn, supra*.

1. Permit Fees

Under these standards, the State's "permit fee" (Rule NT 8(c)) and the first seven words of NT 8(d) is similar to Vermont's $1,000 fee for spent nuclear fuel shipments found inconsistent in IR–15, *supra*, and is itself inconsistent because it represents payment for a permit which has been determined elsewhere in this ruling to be inconsistent.

2. Shipment Fees

The "shipment fees" in CPUC Rules NT 8(d) (except for the first seven words thereof) and NT 8(e), however, are more similar to Illinois' $1,000 per cask fee for spent nuclear fuel transportation to fund inspection, enforcement, state escorts and emergency response, none of which was related to inconsistent provisions or caused diversions or significant transportation delays. The Illinois fee was found consistent in IR–17 and IR–17 (Appeal), both *supra*. Colorado's shipment fees, although larger, also are similar to New Hampshire's $25/year or $15/trip fee for hazardous materials transportation, used to fund transportation and environmental programs and related to a minimal delay licensing system, which fee was found consistent in *New Hampshire Motor Transport Assn.* v. *Flynn*, supra.

There is no showing on the record in this matter that the CPUC Rule NT 8 (d) and (e) shipment fees are related to inconsistent state activities or cause diversion or unreasonable delays of hazardous materials transportation. Based on this record, therefore, they are consistent with the HMTA and the HMR.

V. Summary

Many of the State's requirements are inconsistent with the uniform nationwide regulation of hazardous materials transportation contemplated by the HMTA and the HMR and thus have been found inconsistent herein.

To the extent the State believes that certain of its requirements are appropriate for nationwide application, it may file petitions for rulemaking with RSPA (49 CFR 106.31) or the NRC. To the extent it believes that certain of its requirements are appropriate for application within Colorado, it may apply for a non-preemption determination (waiver of preemption) under 49 CFR 107.215.

VI. Ruling

For the foregoing reasons and based on the record in this matter, I make the following findings. No opinion is rendered concerning the consistency of any provisions of Colorado's Nuclear Materials Transportation Act of 1986 (CNMTA), C.R.S. section 40–2.2–101 *et seq.* Colorado Public Utilities Commission (CPUC) Regulations NT 3(a), 5(c)(5), 8(a), 8(b), 8(c) and 8(f); the first seven words of CPUC Regulation NT 8(d); and Appendix 8–A to the CPUC Regulations are inconsistent with the HMTA and the HMR. CPUC Regulations NT 4, 5 (except for 5(c)(5)) and 6 are consistent to the extent they relate to other consistent requirements; otherwise they are inconsistent. CPUC Regulation NT 9 is inconsistent to the extent it requires different or more prenotifications than the HMR. CPUC Regulation NT 8(d), except for its first seven words, and CPUC Regulation NT 8(e) are consistent with the HMTA and the HMR. No opinion is rendered concerning the consistency of any other CPUC regulations.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on April 17, 1989.

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Friday
April 21, 1989

Part VII

National Labor Relations Board

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry; Final Rule

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The Board issues a Final Rule providing for appropriate bargaining units in the health care industry. The Board has determined that establishing bargaining units by rulemaking will better effectuate the purposes and policies of the National Labor Relations Act than continuing lengthy and costly litigation over the issue of appropriate bargaining units in each case.

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Supplementary Information:

I. Background
II. Rulemaking
III. Cost Considerations
IV. Employer Flexibility
V. Common Expiration Dates
VI. The Units
VII. Small Units
VIII. Equal Employment Considerations
IX. Coverage of the Rule
X. Miscellaneous Problems
XI. Placement Decisions
XII. Extraordinary Circumstances
XIII. Proliferation
XIV. Regulatory Flexibility Act
XV. Dissenting Opinion

I. Background

On September 1, 1988, the Board issued its Second Notice of Proposed Rulemaking (NPR II) (53 FR 33900), modifying in some respects the rule tentatively proposed in its original Notice of Proposed Rulemaking (NPR) (52 FR 25142). Member Wilford W. Johansen dissented from the Board's decision to proceed with rulemaking. For reasons set forth in NPR II (53 FR 33901), the Board provided for another period of comment on all aspects of the proposed rule; that period ended October 17, 1988.

During this additional comment period, the Board received approximately 1500 timely comments. A number of comments received through Congressional offices were copies of letters also sent directly to the Board. On March 23, 1989, the Board met in open session to discuss further the issue of appropriate bargaining units in the health care industry, and this Final Rule is the product of that open meeting. The Board is appreciative of the extensive interest shown by all segments of the health care industry during this rulemaking proceeding, and has carefully considered the entire record during its deliberations. Though this Supplementary Information contains references to various comments submitted during this final phase, the Board wishes to emphasize now, as it did earlier (53 FR 33901), that these references are merely illustrative. The Board's decision has been based on the complete rulemaking record, including the transcript, the witnesses' statements, all comments and briefs, and the exhibits, and not solely on the testimony and comments referred to in NPR, NPR II, and this Supplementary Information.

Approximately 30 of the comments submitted during this final comment period support the Board's proposal in whole or in part, and approximately 1465 comments oppose it. Of the 1465 comments in opposition, approximately one-half are form letters, for the most part containing brief arguments without supporting detail.

The most common form letter, submitted by over 600 correspondents, briefly exhorts the Board to return to the case-by-case approach and to find appropriate only two units, all professionals and all nonprofessionals, plus the statutorily-mandated separate unit of guards. Otherwise, say these commenters, their ability to provide comprehensive, coordinated care would be adversely affected. An example of this form letter is that submitted by St. Luke's Hospital in Bethlehem, Pennsylvania (Comment 434). The form letter contains blank spaces for such information as "(name of organization)"; "(number)" of health care facilities owned by the commenter; and "(number)" of employees; one submitted copy of the form letter did not have the blanks filled in.

A second form letter, such as that submitted by St. Mary's Health Center of St. Louis, Missouri (Comment 875), has been received from approximately 35 commenters, and contains only four sentences. This letter also asks the Board to abandon rulemaking and return to a case-by-case analysis, arguing that, in ways not specified, the rule will increase the risk of life-threatening strikes and result in jurisdictional disputes, inefficient work rules, and higher consumer costs.

The other two most frequently submitted form letters are those received from the Humana chain and its affiliates; over 35 copies of these two form letters have been received. Illustrative of one type is that received from Humana Hospital-Winn Parish (Comment 1474). This letter argues that the proposed rule fails to consider the differences in hospitals and specific circumstances of employees at a time of dynamic change in the industry, could limit flexibility in dealing with personnel at a time this flexibility is needed, and will result in increased costs at a time of growing demand for cost containment. This letter urges the Board to continue a case-by-case analysis, arguing that the rule contravenes Congressional intent.

The other Humana form letter was that submitted by Steven L. Durbin, Vice President of Employee Relations/Education, Humana Inc. (Comment 905), which makes similar arguments but also gives various examples of duties nurses now undertake (e.g. as inservice education, utilization review and discharge planning, or admissions), to show changes in the industry. The letter adds that two proposed units, skilled maintenance and other professionals, would be very small units. The letter argues that the Board's rationale in its proposed rule has inconsistencies regarding salaries of nurses and uniformity in the industry. The letter further argues that the Board is abandoning *St. Francis II* (*St. Francis Hospital*, 271 NLRB 948 (1984)) to save time and resources for itself and suggests other mechanisms for dealing with these problems.

Of the remaining one-half of the comments which oppose the proposed rule, the vast majority make general arguments with little, if any, supporting detail, and many contain portions of the form letters. The arguments in these comments, which for the most part mirror those made during the earlier portions of the rulemaking proceeding, generally fall within the following categories:

a. The health care industry is unfairly being singled out for rulemaking.

b. Rulemaking is contrary to the language of section 9(b), requiring a case-by-case approach.

c. The Board should follow the case-by-case approach of *St. Francis II*.

d. The number of proposed units conflicts with the Congressional admonition against proliferation.

e. If the Board establishes units, there should be only two units, professional and nonprofessional, plus guards.

f. The proposal will lead to increased organizing by unions.

g. Multiple units will result in strikes, repeated strike notices, jurisdictional disputes, and other disruptions of health care.

h. Health care costs will substantially increase as a result of strikes, whipsawing, work rules, bargaining, and contract administration.

i. Hospitals will lose needed flexibility.

j. The Board did not consider the changes in the industry such as teams, and the differences between institutions and between employees.

k. The particular units proposed, such as RN and skilled maintenance, are inappropriate.

l. The implementation of the proposed rule will lead to increased litigation.

m. At least 75 commenters argue that the Board should not treat small, rural hospitals as it does other acute care hospitals because they have less money and staff flexibility, and more overlapping employee duties. Moreover, disruptions at these facilities would have a severe impact on providing health care and employment for persons living in their areas since there are few or no other medical facilities nearby. Many of the 75 commenters provide no further detail on this point.

n. Several commenters embrace the arguments made by Member Johansen in his dissent from the Board's decision to continue with rulemaking.

o. Some commenters argue that the Board is inappropriately foreclosing discussion on bargaining unit issues by refusing to hear evidence on issues considered during rulemaking.

p. About 25 commenters argue that no rule should be made with less than a full five-member Board.

q. Some commenters suggest that the Board consider alternative to a rule, such as a Board panel deciding health care cases.

r. A few commenters argue that the implementation of the Board's proposed rule will expedite the Board's election process resulting, in insufficient time for an employer to respond to a union's organizing campaign.

s. Some comments criticize the extraordinary circumstances provision as being too narrow.

The Board has carefully considered all the above arguments. Some (a, c, e, f, g, j, k, l, and n) were thoroughly dealt with in NPR and NPR II, and the Board believes that no further consideration or response is required. As to these arguments, the Board reaffirms the Supplementary Information and rationale contained in NPR II, as well as pertinent parts of the original NPR.

The point made by the 25 commenters referred to in "p" is moot, since all five Board Members have participated in the consideration and promulgation of this Final Rule.

With respect to the point made in "r," it is the Board's expectation that the rule will reduce what has hitherto been excessive delay and uncertainty in determining the appropriate bargaining unit, but otherwise all the Board's normal processes remain.

With respect to the remaining arguments: argument "b" is considered at II; "d" at XIII; "h" at III; "i" at IV; "m" at VII; "o" at II and XII; "q" at II; and "s" at XII.

The Board acknowledges and has taken into consideration the numerical superiority of the comments opposing the rule proposed in NPR II. From the beginning of this proceeding, employers have preferred continued use of the adjudicatory approach,[1] and labor organizations have favored rulemaking. Since there are many more hospitals than unions in the health care industry, the disparity in the number of comments is not surprising. Although there are exceptions, the comments are for the most part divided pro and con along employer-union lines.

We do not view our task as similar to that of a scale-master, weighing the total body of comments for quantity without regard to substance. Insofar as we have found particular comments to be persuasive, we have reflected that in revisions to the rules previously proposed. To the extent we have found comments to be unpersuasive, we have so indicated in these and previous Supplementary Information sections. The Board "is not required to mold its decision to accord with the weight of the comments it receives." *M.C.I. Telecommunications Corp.* v. *FCC*, 675 F.2d 408, 415, n. 39 (D.C. Cir. 1982), cited with approval in *Telocator Network of America* v. *FCC*, 691 F.2d 525, at 538 (D.C. Cir. 1985). Cf. *Lloyd Noland Hospital & Clinic* v. *Heckler*, 762 F.2d 1561 (11th Cir. 1985).

[1] The Board in NPR II at 33929 stated, in the introduction to Section XIV on Specialized Hospitals, "Some employers suggested that the Board make a separate rule for specialty hospitals, arguing that they are neither acute care hospitals nor nursing homes * * *." Attorney Roger King, among others, was cited, TR 4230–31. In Comment 1142, Bricker & Eckler correctly points out that King's argument at the cited pages was that today's hospitals are varied and complex, and that rulemaking is "not suited for these institutions." The commenter is correct; throughout these proceedings, King has opposed rulemaking in every form, for all institutions. However, the Board intended at the point in question merely to introduce the discussion as to whether specialty hospitals should be covered by the rule; reference to a separate rule for such hospitals was inadvertent, and that possibility was not considered by the Board in NPR II. In fact, the Board excluded psychiatric hospitals from the proposed rule; it did not make a separate rule for them. The misstatement about King's testimony as to this point was immaterial to the Board's deliberations but is hereby acknowledged and corrected.

II. Rulemaking

In both prior Notices, the Board set forth at considerable length the reasons prompting it to embark on rulemaking to establish appropriate bargaining units in the health care field. These reasons are set forth fully at 52 FR 25143 through 25145, and 53 FR 33901 through 33904, and are still valid.

Both the AFL–CIO (AFL) in its brief filed jointly with eleven other labor organizations (Comment 1713), and the American Hospital Association (AHA) in its brief (Comment 1711), deal at length with the Board's authority under section 9(b) to engage in rulemaking in the area of appropriate bargaining units. See also Comment 1055, Eastern Hospital; Comment 1330, Taft, Stettinius & Hollister; Comment 1663, Labor Policy Association; and Comment 379, James T. O'Reilly (supporting), among others.

Section 9(b) of the National Labor Relations Act requires the Board to decide "in each case" what the appropriate bargaining unit shall be. At the same time, section 6 gives the Board general authority to make rules, in the manner set forth in the Administrative Procedure Act, "as may be necessary to carry out the provisions of this Act."

We have carefully examined the legislative history of these sections, particularly that surrounding section 9(b), and find nothing to impugn the legitmacy of this rulemaking proceeding. The words "in each case" were added to S. 1958 by Secretary of Labor Perkins, along with a number of other changes, as "small amendments" to be "made for the sake of clarity." I Legislative History (1935) at 1442 (Hearing 3/12/35.) A later House version of the bill, HR 7978 (5/9/35), contained the "in each case" language (II Legislative History at 2903), although earlier House bills had not. The House Committee Report, submitted by Representative Connery, stated:

> Section 9(b) provides that the Board shall determine whether, in order to effectuate the policy of the bill (as expressed in sec. 1), the unit appropriate for the purposes of collective bargaining shall be the craft unit, plant unit, employer unit, or other unit. This matter is obviously one for determination in each individual case, and the only possible workable arrangement is to authorize the impartial governmental agency, the Board, to make that determination. There is a similar provision in the Railway Labor Act of 1934 (sec. 2(9); 2(4)). [II Legislative History, supra, at 2976.]

The AFL suggests that the National Mediation Board (NMB), which administers section 2(9) of the Railway Labor Act, has defined units in the airline industry on an industry-wide basis as the result of industry-wide

proceedings. If that were so, it would seem clear, consistent with Congressman Connery's analogy, that the Board could decide units for an entire industry also. However, the cases cited by the AFL in its comment (p. 12, n. 18), are not fully supportive of its position. Though the NMB has used industry-wide proceedings for bargaining unit determinations in the airline industry, its pronouncements in each of the six proceedings that have been called to our attention have been limited to the particular airline involved.

For the reasons set forth in the NPR and NPR II, including the virtually unanimous views of courts, scholars such as Kenneth Culp Davis, and many other experts, we believe that our use of our rulemaking authority in this area is well within our discretion. In addition to the reasons previously given, we note that the Board has long made use of "rules" of general applicability to determine appropriate units, for example: (1) That single facility units are presumptively appropriate. *Haag Drug Company, Inc.*, 169 NLRB 877 (1968). See also *NLRB* v. *New Enterprise Stone & Lime Co.*, 413 F.2d 117 (3d Cir. 1969); (2) that residual units are not separately appropriate when sought by an incumbent. *The Budd Co.*, 154 NLRB 421 (1965); (3) that plant clericals and office clericals do not constitute an appropriate unit absent agreement of the parties. *The Kroger Co.*, 204 NLRB 1055 (1973); *Robbin & Myers, Inc.*, 144 NLRB 295 (1963); (4) that the appropriate unit in decertification elections is the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955). See also the "rules" described in *Otis Hospital*, 219 NLRB 164, 166 (1975), pertaining to the appropriateness of residual units in the health care industry.

We are aware of no judicial criticism of the Board's longstanding use of "rules" in the appropriate bargaining unit area, and the Supreme Court in *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969), strongly suggested that, when it promulgated "rules," the Board would be better advised to utilize its rulemaking powers under the Administrative Procedure Act (APA). The Supreme Court similarly endorsed the Board's use of its rulemaking powers in *NLRB* v. *Metropolitan Life Insurance Company*, 380 U.S. 438 (1965), at 444, n. 6, when, in remanding a bargaining unit case to the Board, the Court stated:

> Of course, the Board may articulate the basis of its order by reference to other decisions or its general policies laid down in its rules and its annual reports, reflecting its "cumulative experience," so long as the basis of the Board's action, in whatever manner the Board chooses to formulate it, meets the criteria for judicial review. (Citations omitted.)

There is nothing inconsistent between section 9(b) and the Board's use of its APA rulemaking power. Section 9(b) requires the Board to decide the appropriate unit in each case, and the Board will continue to do so under this rule. Should the parties not agree on the appropriate unit, a hearing in each case will still be directed, with the Board ultimately rendering a decision on the appropriate unit applicable to that particular petition and that particular employer's operation. The Board may rely on a rule properly promulgated under the APA just as it has, since 1935, relied on rules formulated under adjudication. The Supreme Court said as much in a recent case arising under the Social Security Act. That Act, like the NLRA, requires determinations (of disability) to be made on an individual basis, after hearings, if the issue is in dispute. Because of similarities between cases, the Secretary of Health and Human Services promulgated, through rulemaking, a grid or matrix, through which it could be determined, with considerable predictability and uniformity, whether disability in a particular case existed. In *Heckler* v. *Campbell*, 461 U.S. 458, 467 (1983), the Court stated:

> We do not think that the Secretary's reliance on medical-vocational guideline is inconsistent with the Social Security Act. It is true that the statutory scheme contemplates that disability hearings will be individualized determinations based on evidence adduced at a hearing. See 42 U.S.C. sec. 423(d)(2)(A) (specifying consideration of each individual's condition); 42 U.S.C. sec. 405(b) (1976 ed., Supp. V) (disability determination to be based on evidence adduced at hearing). But this does not bar the Secretary from relying on rulemaking to resolve certain classes of issues. The Court has recognized that even where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration. See *FPC* v. *Texaco Inc.*, 377 U.S. 33, 41–44 (1964); *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956). A contrary holding would require the agency continually to relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding. See *FPC* v. *Texaco Inc.*, *supra*, at 44.[2]

As indicated, some of the form letters, as well as Comment 884a, submitted by Martha Jefferson Hospital, Comment 1049 submitted by Vanderbilt University School of Nursing, and Comment 905, by Humana Inc., suggest as an alternative that the Board establish special panels "in the Regions and Washington to hear, decide and resolve health care bargaining unit issues." This is neither feasible nor helpful. Only the Board members themselves can resolve contested cases, including unit issues. *KFC National Mgmt. Corp* v. *NLRB*, 497 F.2d 298 (2d Cir. 1974). The Board normally decides representation cases (as well as other cases) by panels of three members, and to create a permanent panel of three would not be likely to improve efficiency, and instead might result in delay. Moreover, it would unjustifiably exclude the other two members. Because of the volume of cases before it, the Board simply cannot hear oral arguments except in very unusual cases, and we are aware of no useful purpose that would be served by sending Board members to regional offices to decide health care cases. Sitting in the locale of the contested case would not add to the members' understanding of the case.

Some commenters suggest the use of rebuttable presumptions. The Board has previously rejected that suggestion, for the reasons set forth in NPR at 52 FR 25145. The Board's experience since 1974 is that painstaking elicitation and examination of the facts of each individual case is, absent extraordinary circumstances, neither helpful nor

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[2] In *Heckler*, the Court noted that, at the statutorily-required "hearing," the claimants would be given "ample opportunity both to present evidence relating to their own abilities and to offer evidence that the guidelines do not apply to them (footnote omitted)." [Id. at 467.] Similarly, here, if the parties do not execute one of the Board's stipulated or consent agreement forms, and the petition is not dismissed for administrative reasons, there will be the hearing required by section 9(c) of the Act. At the hearing, the facility being organized, or the union, will be given ample opportunity to demonstrate that the unit guidelines are not applicable to it for such reasons as (a) the facility is not a hospital; (b) insufficient numbers of its patients receive acute care; (c) it is primarily a nursing home; (d) it is primarily a psychiatric hospital; (e) it is primarily a rehabilitation hospital; (f) its situation presents "extraordinary circumstances"; etc.

Moreover, we note that, under section 9(c) of the NLRA, the "hearing" requirement is not specifically related to the appropriate unit question, but rather, more generally, to whether a question concerning representation exists. Thus, although now the Board will in most cases render a decision on one subsidiary issue—the scope of the appropriate unit—on the basis of this rule, the Board will resolve other issues, such as whether a contract bar exists, whether certain employees are supervisory or managerial, whether the petitioner is a labor organization or has a conflict of interest, whether a single facility unit is appropriate, the composition of the appropriate unit, etc., on the basis of testimony taken at the hearing. The Board has merely determined that the issue of the scope of the appropriate unit within an acute care hospital does not generally require adjudicatory consideration, and that otherwise it would have "continually to relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding." *Heckler* v. *Campbell*, supra at 467.

outcome determinative as to the scope of the appropriate unit. See NLRB Exhibit 5, revised, referred to in NPR II at 53 FR 33903. The use of mere presumptions would not eliminate the duplicative litigation referred to by the Supreme Court in *Heckler* v. *Campbell*, but establishing units by rulemaking will go a long way towards accomplishing that objective.

Finally, although we are highly satisfied with this rulemaking proceeding both because of the large amount of valuable information it has given us and because, based on that information, we are confident we have moved towards eliminating much of the unnecessary uncertainty existing in this area, we are under no illusions that the answers we now provide will necessarily solve all health care unit problems, for all time. This is our first venture in major, substantive rulemaking. At some future date, after the rule has had a fair trial, it may be appropriate to reexamine the rule to determine how well it has worked, whether new developments have changed our underlying assumptions and require different conclusions, and whether some other provisions might improve those now promulgated.

III. Cost Considerations

Strikes and strike costs were dealt with at some length in NPR II. (53 FR 33908–33910.) Though the comments following NPR II did not challenge the Board's finding there that the incidence of strike activity in the health care industry has been lower than in all other industries (53 FR 33908), industry commenters identify approximately 20 strikes that have taken place. A number of employers report that they have experienced one strike (e.g., Comment 1708, Ellis Hospital; Comment 1718b, Waterbury Hospital Health Center; Comment 1654, Pottsville Hospital and Warne Clinic; etc.). Two commenters report multiple strikes (Comment 1145, East Liverpool City Hospital, four in 20 years; Comment 1249, Santa Rosa Memorial Hospital, two strikes in last 8 years totalling 70 days plus four 10-day strike notices).

The evidence in NPR II showed that sympathy strikes in hospitals have been virtually nonexistent. (53 FR 33909.) Nonetheless, two hospitals now report sympathy strikes. (Comments 1259 and 1729b, Bridgeport Hospital, regarding Waterbury Hospital; Comment 516, Saint Elizabeth Medical Center (sympathy strike by delivery drivers at unnamed hospital).)

The strikes reported in the aforementioned comments are insufficient in number or character to conflict with the Board's prior conclusions in NPR and NPR II.

A few hospitals discuss costs relating to their strikes. For example, in Comment 981, O'Bleness Memorial Hospital reports spending $20,000 for security forces and over $20,000 for legal and negotiating fees; two of the three times the hospital renegotiated its contract, the union issued a strike notice and the hospital incurred costs in strike preparation. Pottsville Hospital and Warne Clinic reports $20,000 in legal fees and staff time (Comment 1654). The only cost amounts we regard as possibly noteworthy involve Wadley Regional Medical Center and Santa Rosa Memorial Hospital. In Comment 937, Wadley states that, in 1978, its costs for a strike were "up to $1,000,000." Santa Rosa, in Comment 1249, reports its labor relations costs relating to two strikes, four strike notices, and three organizing campaigns, were "up to 5 million." In both instances, and in the absence of elaboration, the hospitals' use of the phrase "up to" leads us to believe that the amounts given are only upper-limit estimates and not careful calculations. Nor is there any indication whether these costs were largely wage increases, legal fees, lost revenues, overtime, remuneration of striker replacements, or even lost profits. Legal fees are, of course, highly individual. Where cost estimates include staff time, it is not clear how much of the staff's time was ordinary expense precommitted to be paid regardless of whether there was a strike. See, e.g., Comment 1654, Pottsville. In any event, the costs of the small number of strikes mentioned do not seem disproportionate to what we believe Congress must have anticipated when it authorized collective bargaining in the health care industry by placing it under the Board's jurisdiction in 1974.

Approximately twelve commenters provided information regarding costs of bargaining. For example, in Comment 1684, MonVale Health Resources, Inc. reports it spent $40,000 in the last negotiations with its nonprofessional unit and $6,000 for arbitration. In Comment 1714, Gerald Champion Memorial Hospital reports $16,000 for each of its negotiations. In Comment 1143, Lakeland Hospital estimates the cost from its one nonprofessional unit as $15,000 to $25,000. In Comment 1476, Brookhaven Memorial Hospital reports the cost of one unit's organizing campaign as 24 days of hearings and lost productivity, and $80,000 in legal fees. It is the Board's expectation that its promulgation of this rule establishing appropriate bargaining units will render lengthy scope-of-unit hearings unnecessary and to that extent some costs, such as legal fees, will therefore diminish. In any event, it would not be suitable for the Board to reject appropriate bargaining units on the basis that the very things sought by collective bargaining—negotiating and grievance processing—can be obtained only at some financial cost. The statutory amendments enacted by Congress in 1974 represented an implicit policy decision that collective bargaining in the health care industry will produce countervailing benefits justifying the cost.

IV. Employer Flexibility

Four commenters take particular issue with the Board's reasoning that rulemaking has no logical connection with an employer's continuing ability to respond flexibly to changing needs of the times. (53 FR 33904; see also 53 FR 33910)

Martha Jefferson Hospital (Comment 884A) argues that employees will resist change by seeking to join one of the units deemed appropriate. That argument has no support in the facts adduced during this proceeding; there has been no showing that unions have resisted changed job duties. Moreover, logically, the argument, if valid, would apply to some extent regardless of what units the Board finds appropriate, and regardless of the method the Board utilizes to determine the scope of appropriate units. It is true that union organization does lead to the requirement that employers bargain before making changes in wages, hours, and working conditions, but that is an obligation imposed upon all employers by the NLRA, and we have no basis upon which to exempt health care employers from these requirements. There has been no demonstration of undue resistance to change by health care unions.

The University of New Mexico Hospital (Comment 1022) suggests that jurisdictional disputes may arise but offers no examples to support its speculation; few if any were offered in the earlier stages of this proceeding either. (53 FR 33909). Based on the evidence presented to us, we conclude that jurisdictional disputes are infrequent in the health care industry generally. If such disputes were to arise, section 10(k) of the Act would be available to assist in resolving them. Moreover, if there were several units in a facility, it is possible they would be represented by the same labor organization, which might work things out by itself.

Allegheny Health Services (Comment 1094) reasons that implementing a

hospital-wide fitness policy, for example, including drug testing, would be more difficult or even impossible if bargaining had to be held with eight separate units. Even if that is true, the evidence shows that, at least in the past, very seldom have hospitals had more than two or three units. (52 FR 33933.) Moreover, though no specific evidence was offered on this point, we suspect that other hospital-wide policies, such as holiday and vacation schedules, cafeteria benefits, parking privileges, etc., are uniform at many hospitals despite the presence of several units. Lastly, if one is to speculate, it could be argued with equal logic that an employer might have better success in negotiating a new plan with one small unit's representative, implementing that, and later using it as precedent for changes elsewhere, than it would in negotiating a new plan with a single labor organization representing many types of employees with diverse interests.

Taft, Stettinius & Hollister (Comment 1330) refers to a proposal by the American Medical Association for a new classification, RCT (registered care technician), in which employees could move up from aide to LPN to RN as they received additional training. Taft, Stettinius argues that, under the Board's proposed rule, employees within the RCT classification would be in three different units and therefore hospitals will lose flexibility in using RCTs. However, insofar as employees are in fact aides, LPNs and RNs, they are, for reasons set forth in NPR and NPR II, entitled to be in separate units, and creating a new generic classification of RCT does not change that fact. Nor would any RCT be in more than one unit at a time, even though he or she might, over time, progress from one unit to another. In any event, at this time the development and implementation of the RCT classification is speculative. Taft, Stettinius' additional comment that hospitals would have to structure their staffs to conform to the proposed rule is supported neither by evidence nor reason. Physicians will still practice their specialty, as will RNs, technicals, etc. Nothing in the rule precludes hospitals from structuring their operations as they see fit.

V. Common Expiration Dates

In NPR II, the Board noted that "hospitals have not generally sought common expiration dates, which would be a possible solution to recurring near strikes." (53 FR 33909) The AHA argues (Comment 1711) that "common expiration of multiple contracts virtually would insure a complete cessation of operations, and, thus, is an illogical, unworkable goal for hospitals to pursue or for the Board to use as support for its conclusions here." See also Comment 987, Dana-Farber Cancer Institute, which suggests that the Board should not criticize the health care industry for not availing itself of common expiration dates because there have been crippling strikes in New York, Minneapolis, and San Francisco as a result of the strategy of common expiration dates.

We accept the criticism of these commenters, but their argument proves too much. Simultaneous strikes that may occur on the occasion of common expiration dates would seem to support more rather than fewer units. An obvious charcteristic of a large bargaining unit would be that all employees' no-strike obligations would expire at the same time, and bargaining for the entire unit would take place at the same time. Although a small unit's work stoppage may not shut down the entire facility, a large unit's stoppage surely will. This point was made in NPR II, at 33909; see also *Manor Healthcare Corp.*, 285 NLRB No. 31 (1987), slip op. at 13, where the Board pointed out that "an employerwide unit in this situation would tend to broaden a given dispute and increase the potential for disruption of patient care."

VI. The Units

Surprisingly few comments offered additional facts which would be helpful to the Board in making a final decision with regard to the appropriateness of particular bargaining units.

Some additional information on teams was proffered, but the Board reaffirms its earlier conclusion as to the limited relevance of the so-called "team approach." See NPR II 33907; 33913. A few commenters state they have teams, like discharge planning, but do not detail interaction or demonstrate why separate units would prevent use of teams. One commenter, Bethesda North Hospital (Comment 1303), acknowledges that each discipline retains its particular area of accountability, but argues that "it is vital to the progress of the patient that they each understand and can cross over into each other's area * * *." See also Comment 1044, Missouri Hospital Association, which emphasizes that the Board has conceded the existence of teams, however widespread they may be.

On a related point, several commenters give examples of cross training. Comment 586, Marshalltown Medical and Surgical Center, describes its practice of having security guards work the switchboard and do maintenance work. However, such employees would necessarily be placed into the statutorily-mandated separate guard unit. Attached to Comment 586 is a newsletter from George E. Speese, a Human Resource Development consultant, who describes how an East Oregon hospital assigned switchboard duties to a "radiology tech," and how a Philadelphia hospital assigned nursing unit clerical duties to a phlebotomist. Similarly, Comment 1053, La Grange, states that certain non-unit jobs were performed by unit employees (dietary employees performed some outside maintenance duties, certified nurses' assistants performed some clerical duties, etc.). In such situations, La Grange argues, the Board's proposed rule would require it to carve out skilled maintenance and clerical functions into separate units. However, this argument is based on a misunderstanding of Board unit determinations as well as of the provisions and purposes of the rule. Board unit determinations do not require that certain types of work be assigned to any particular unit. To the contrary, employers are free to make whatever work assignments they wish, subject of course to their obligation to bargain before making any changes in working conditions. Where one employee is assigned functions relating to more than one unit, he or she is a "dual function" employee, and, upon request, the Board will determine the unit placement of such employee. See, e.g., *Otasco, Inc.*, 278 NLRB 376 (1986); *Oxford Chemicals, Inc.*, 286 NLRB No. 13 (1987). In neither of the cited cases did the Board impose any restrictions on the employer's making cross-unit assignments; neither has the Board imposed such restrictions in any other case of which we are aware.

La Grange's comment also refers to medical technicians' being trained in at least 3 areas, including hematology, bacteriology, and histology. This comment is consistent with the observation of NPR II that "the majority of cross-training that occurs is among the technical categories themselves." NPR II at 33919.

Comment 1081, Wausau Hospital Center, discusses product line management. Employees have to work together, and sometimes are even supervised by an individual who may not be their direct line supervisor. The comment states that the Board misunderstands this concept and that multiple bargaining units jeopardize this program. As with cross-training, discussed above, this commenter does not explain how the Board's unit determinations would in any manner inhibit product-line management.

A small amount of additional information was offered as to the proposed separate RN unit. See Comment 1026, by Spelman Memorial Hospital, that, with 128 beds, RNs report to the same administrator as lab technologists and physical therapists. Moreover, RNs work in medical records along with other professionals. Comment 1330, Taft, Stettinius & Hollister, asserts that RNs are not unique, since other professionals also have direct and continuous patient interaction, etc. This comment concedes that RNs are the "hub" of the professional administration of health care, but argues that to remove the hub and separate it from the spokes will cause the wagon to break down. Comment 1675, Middletown Regional Hospital, states that some of its nurses' former work is now done by social workers, and that nurses at this hospital share the same pay system and pay, as well as some common first line supervision, with other professionals.

The comment of Taft, Stettinius that all professionals interact with patients, fails to give sufficient weight to the adjective "continuous." The uniqueness of the RNs' function in this regard was thoroughly dealt with in NPR II at 33911, V, B, 2. The fact that in smaller hospitals there may be some common supervision does not cause us to reach a different result, particularly in view of the very few examples presented.

In Comment 1044, Missouri Hospital Association, through its attorneys, Spencer Fane Britt & Browne, takes issue with the Board's observation in NPR II that nurse licensing exams are uniform throughout the country. However, at TR 3595–98, witness Faith Reierson described national licensing exams in considerable detail. The National Council of State Boards of Nursing consists of the executive secretary and the members of the various nursing boards in the 50 states and 3 territories. Each of the states and territories has contracted with the National Council to provide that state or territory's licensing examination for RNs and LPNs. The same test is administered twice a year on the same day at the same time (except for time zone variations) in each of the states and territories. No contrary testimony was introduced.

On January 19, 1989, the Secretary of Health and Human Services made public the report of his Commission on Nursing. This Commission was an advisory panel appointed to examine reports of a widespread shortage of registered nurses, and to make recommendations for resolving the shortage. We have examined the Commission's Report and find that it supports our observations in NPR II concerning the nursing shortage, unique problems confronting nurses, and the special need of nurses for their wage compression to be alleviated.

In Comment 975, American Physical Therapy Association urges the Board to create a separate unit for physical therapists, in part because of their separate licensure. The practice of physical therapy is administered in almost all jurisdictions by a separate board. The commenter represents, and it is undoubtedly true, that physical therapists have concerns peculiar to their speciality, such as interpretation of their practice act, private patient referral and access, home care extension services, and experimental structures for student clinical supervision. However, especially in view of their relatively small numbers and their limited history of separate bargaining (in New York, largely), as well as the Board's desire to limit the number of units unless there is strong justification presented in the rulemaking record, the Board declines to establish a separate unit for physical therapists. If found to be professionals, they are to be included with other non-RN and non-physician professionals. See NPR II at 33917–33918.

The Board affirms the appropriate unit findings made in NPR II, for the reasons set forth therein, and except to the extent modified in this Final Rule and accompanying Supplementary Information.

VII. Small Units

A number of commenters argue that the proposed "skilled maintenance" and "other professional" units, in particular, may be too small for collective bargaining purposes. See, e.g., Comment 1686, American Society for Personnel Administration, which represents that skilled maintenance frequently constitutes less than 2% of the workforce. See also, generally, Comment 905, Humana; Comment 562, The Methodist Hospitals (Indiana); Comment 1021, St. Elizabeth's Hospital; Comment 1044, Missouri Hospital Association; and Comment 1330, Taft, Stettinius & Hollister. Blanchard Valley Hospital (Comment 369), referred specifically to excessive administrative costs that may be associated with negotiations for very small units.

We recognize the possibility that some skilled maintenance units will be relatively small, as will some "other professional" units and some physicians' units. The same point has been made with respect to rural hospitals, whose small employee complements may also lead to very small units.[3] St. Vincent Hospital (Comment 1691) argues that a Coronado Hospital with 105 beds, there would be bargaining units of 1–2 persons. In Comment 1044, Missouri Hospital Association hypothesizes that in a hospital of 20 beds, there might be more units than patients.

We doubt this situation will frequently arise. For one thing, it is likely this "problem" will be self-policing. Where the entire workforce is very small, we believe that even smaller sub-groups will seldom want separate units; nor will unions be likely to organize such small units. Moreover, we note that under adjudication, the Board rarely if ever reached different results because of the size of facility. In only one case, to our knowledge [4], did the Board arguably reach a different result because of the number of employees involved. In *Mt. Airy Psychiatric Center*, 217 NLRB 802, 803 (1975), one of the earliest cases decided after the 1974 amendments, the Board included two employees who *arguably* were technicals in the service and maintenance unit, since they were the only employees performing a "technical" function. Lastly, the Board did propose a 100-bed dividing line with fewer units for small hospitals in the first NPR, but industry and labor organizations were virtually unanimous in their opposition to it (53 FR 33927).

Despite the foregoing, and despite the improbability that the problem will frequently arise, we agree that units of two or three employees, or of similarly small numbers of employees, would in many cases be impractically small, especially in the health care industry. Where so few employees are involved, it can be argued with some degree or persuasiveness that despite the shared, unique concerns and backgrounds that would otherwise make the separate units appropriate, these concerns are outweighed by concerns over disproportionate, unjustified costs and undue proliferation of units. We therefore shall revise the rule to provide

[3] Parenthetically, we noted that a large number of small rural hospitals call attention to their precarious financial condition. Comment 333, Holy Rosary Medical Center; Comment 1300, Bowie Memorial Hospital; Comment 1307, United Hospital Center; Comment 1673, Grayson County Hospital; Comment 967, Northern Maine Medical Center; Comment 1700, Weston County Memorial Hospital and Manor; etc. We do not consider the financial condition of rural or small hospitals relevant to a determination of appropriate bargaining units.

[4] But see also *Extendicare of West Virginia, d/b/a St. Luke's Hospital*, 203 NLRB 1232 (1973), which arose prior to the 1974 amendments.

that a petitioned-for unit of five employees or fewer shall constitute an "extraordinary circumstance" removing the case from strict application of the rule, and the Board will consider by adjudication what the appropriate scope of the unit should be.[5]

We recognize that situations involving small units may vary. Thus, in some situations, if the requested units were not deemed appropriate, the small, requested unit might have to be added to a vastly larger unit. On the other hand, a requested unit falling within this extraordinary circumstances exception might be considered in conjunction with one or more otherwise appropriate units of approximately the same size. Requiring a combination of these otherwise separately appropriate groupings may give rise to considerations different from those in the previous example. The Board will render appropriate decisions through its adjudicatory processes when the extraordinary circumstance provision is invoked in this situation. This approach will allow us to examine individual circumstances where justified, while eliminating unnecessarily repetitive litigation.

VIII. Equal Employment Considerations

Comment 1098, Myerson & Kuhn (position paper by Susan Warner), represents that RN units are dominated by females, 95–98%; physicians are dominated by males (primarily white), in one large medical center, 83%; technicals are dominated by females, 72–78%, with less than 50% minorities; other nonprofessionals are dominated 90% by minorities; business office clericals are predominantly female, and almost 50% white; and skilled maintenance is 85% male, 75% white. This commenter observes that hospitals are subject to Title VII of the Civil Rights Act of 1964, and argues that the proposed rule will defeat hospitals' efforts to integrate their workforces and provide opportunities for minorities and women. Hospitals will be hampered by negotiations with unions representing what are in effect segregated units, insuring that these units remain segregated. She points particularly to seniority and says most collective-bargaining agreements do not recognize seniority from other units, thus impeding upward mobility. Warner's cover letter expresses the opinion that this aspect has not been adequately explored and requests that the Board extend the comment deadline for this purpose. Her remarks are echoed by Comment 1508, Thomas Jefferson University Hospital.

This is a question that has previously concerned us also, and during the first round of hearings the Board's representative specifically asked, twice, for comments on this subject (see TR 5225, 5243), noting that former-Member Jenkins had raised the same question during the 1975 oral arguments held shortly after passage of the amendments.

Only two witnesses addressed the subject: Jerry Shea, SEIU's Director of the Health Care Division; and Cathy Schoen, consultant to SEIU and its former Research Director. Both testified at some length, answering questions raised by management attorney Roger King. Schoen submitted a supplemental statement addressing it further. SEIU has represented over a quarter million workers in the health care industry, through 80 separate locals.

The testimony of Shea and Schoen was that "balkanization," or rigid stratification within classifications, with little upward mobility, has been characteristic of the entire health care industry, representing the attitude of most employers that they would rather not lose a good worker and have not deemed it in their interest to provide training for promotions to other classifications; this has been done for bureaucratic and not for nefarious or uncaring reasons. They testified that the medical "model" characteristically organizes access to positions through outside education and licensure certification as opposed to, for instance, the apprenticeship model that operates in the skilled trades.

Schoen testified there is in effect a caste system, with employers preferring departmental seniority regardless of whether or not there is unionization, and that it has been unions that have attempted to break out of this system. (TR 5221 ff.) Frequently even with broad units there is departmental seniority. (TR 5242.) Some subgroups have successfully bargained for seniority across unit lines. (TR 5244–45.) In her Supplemental Comments, Schoen gives as examples of these exceptional cases Mt. Sinai in Chicago, where SEIU secured hospital-wide seniority for business office clericals, as well as bumping rights in the event of layoffs' and Cape Cod Hospital, where SEIU successfully negotiated hospital-wide mapping of jobs according to skills and entry level requirements, so employees could better see mobility paths. Schoen also notes the SEIU Local 250 contract for Kaiser in Northern California, covering 9,000 workers from service staff to pharmacists; there, seniority and promotion accrue first by department, then by facility. Schoen concludes that there "is a narrow administrative orientation towards human potential that limits mobility—not the units in which workers choose to organize." A footnote to Schoen's Supplemental Comment lists three studies on this subject. Brief reference was made to this evidence in NPR II at 33910.

In view of the Board's express invitation on the record for further evidence on this subject, and the limited substantive response, the Board does not see a need for additional discussion. Having considered the comments and the record evidence on this issue, the Board affirms its prior conclusion that the evidence fails to show that the units found appropriate will limit minorities' or women's opportunities for job advancement and security, and may possibly have the opposite effect. (53 FR 33910.)[6]

IX. Coverage of the Rule

Though not objecting to the Board's exclusion of nursing homes from the proposed rule, the AFL objects to the Board's summation of the evidence (NPR II, Section XII, at 33927–29), suggesting that the Board's conclusions might not be accurate and might prejudice future rulemaking by referring to lack of uniformity among nursing homes.

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[5] Though, based generally on our prior experience as well as the evidence accumulated during this rulemaking proceeding, we have decided that a unit of five of fewer employees automatically triggers the "extraordinary circumstances" exception, we recognize that there is no ineluctable logic in the number five, and that other situations may occur in which a party may contend that the number of employees in the petitioned-for unit, or other circumstances, may require deviation from strict application of the rule. Thus, the "extraordinary circumstances" exception remains available (most commonly through an offer of proof—NPR II at 33933) for any party who wishes to argue for any reason that the rule should not be applicable to its facility. At the same time, we reemphasize that we do not intend for the "extraordinary circumstances" exception to "provide an excuse, opportunity, or 'loophole' for redundant or unnecessary litigation." NPR II at 33932. The Board will not reconsider, under the "extraordinary circumstances" exception, the arguments it has already rejected in this exhaustive proceeding.

[6] In one adjudicated case, the Board adopted the conclusion of an administrative law judge that a bargaining unit limited to a coke department continued to be separately appropriate even through one of the parties alluded to a formal consent decree (*U.S.* v. *Allegheny-Ludlum Industries*, 63 F.R.D. 1 [N.D. Ala. 1974], affd. 517 F.2d 826 [5th Cir. 1975], cert. den. 425 U.S. 944 [1976]), the primary objective of which was to create transfer opportunities so that employees in departments like the coke department could move into other departments with higher skills. The purpose of the consent decree was to alleviate past alleged discrimination on the basis of race, sex, color, and national origin. As indicated, the Board found accretion was not appropriate, despite the existence of the consent decree. *Armco, Inc.* 279 NLRB 1184 at 1184, 1214–15, 1218–19 (1986).

Though we agree that our information as to nursing homes has been limited, we do not agree that this part of the prior Supplementary Information will in any way prejudice future proceedings that might involve nursing homes. Such proceedings would be based on evidence presented herein.

Only one commenter would include psychiatric hospitals, Comment 322, Union of American Physicians & Dentists. That suggestion was made not on the basis of specific facts or arguments on the merits, but rather because, in view of the many instances of common ownership and interlocking directorates, it would allegedly be relatively simple for "devious" attorneys to make a given facility fit within an exclusion. We have no good reason to believe that parties will attempt to dupe the Board into thinking that an institution is not what the facts make it out to be. In any event, such a remote possibility is an insufficient reason for including a type of facility which the Board finds, for reasons explained in NPR II at 33929–30, should not be covered by the proposed rule. We shall continue to exclude psychiatric hospitals from coverage of the rule.[7]

In NPR II, the Board noted that it did not have much evidence on rehabilitation hospitals and various other specialty facilities, and so these facilities were "tentatively" included. See NPR II at 33931. Those who had commented had argued that care was integrated, but did not urge special treatment. NPR II, Section XIV.

New England Rehabilitation Hospital, Comment 952, represents that it is solely a rehabilitation facility, but that average patient stay has been decreasing and last year was just under 30 days. It documents more completely the integrated care required for comprehensive rehabilitation. For one thing, as with psychiatric hospitals, RNs are not the primary facilitators of patient care, and are significantly outnumbered by other professionals. Teams are used not only for special situations, but carry out day-to-day treatment for each and every patient. In all cases there is close integration between the work of RNs and that of physicians, therapists, social workers, psychologists and dieticians. RNs are not left to themselves on off-shifts; therapies are conducted on weekends, and social workers meet with patients and families evenings and weekends. Similar information is offered by Comment 1273, The Rehab Hospital of York, which states that its occupational therapists, physical therapists, and speech therapists continuously collaborate with physicians and RNs to develop and provide treatment for all patients. New England Rehabilitation Hospital has 198 beds; The Rehab Hospital of York, 250 employees.

The most extensive comment addressing this issue was that submitted by Specialty Hospital Group, part of National Medical Enterprises, Inc., Comment 970. That group includes 53 freestanding psychiatric hospitals, 23 freestanding rehabilitation hospitals, 18 freestanding substance abuse treatment facilities, and 100 managed facilities of the three varieties. First, it describes how AHA registers some hospitals as "rehabilitation" hospitals; average length of stay is not involved. Second, Congress exempts rehabilitation hospitals from Medicare's prospective payment system, and implementing regulations (42 CFR 4052) contain a specific, 7-part definition of a rehabilitation hospital. Rehabilitation hospitals may also be accredited by one of two bodies: Joint Commission on Accreditation of Healthcare Organizations (JCAHO), under different standards from those applied to regular hospitals, or by Commission for Accreditation of Rehabilitation Facilities (CARF). Accreditation by JCAHO or CARF automatically satisfies six of the seven criteria constituting the definition for Medicare prospective payment exclusion purposes: All except the requirement that, during the most recent 12-month reporting period, 75% of the inpatient population required intensive rehabilitative services for the treatment of one or more of certain specified conditions.Thus, exclusion of rehabilitation hospitals would be administratively feasible, claims this commenter.

Specialty Hospital Group further points out that one of the accreditation standards under the Medicare definition requires multidisciplinary care. Each patient must have at least three hours of physical or occupational therapy per day for Medicare to pay for the care as "medically necessary"; therefore, it is argued, nurses are not the primary facilitators of care in rehabilitation hospitals. Moreover, for Medicare coverage to apply, rehabilitation hospitals' patients must be medically stable before they are admitted. Thus, it appears that the level of acuity at rehabilitation hospitals is considerably lower, and generalizations about job classifications and appropriate units at other types of hospitals may not apply.

Specialty Hospital Group does not ask for exclusion of alcohol and drug abuse hospitals (if there are any), but for clarification of the rule to make it clear that alcohol and drug abuse residential treatment facilities that are not hospitals are not covered.

The rule previously proposed covers only "acute care hospitals." An acute care hospital is defined as a "short term care hospital in which the average length of patient stay is less than thirty days." It seems likely that the acute care definition would exclude many rehabilitation, as well as drug and alcohol, facilities. Yet, if it is true, as New England Rehabilitation Hospital represents, that its average length of stay is now slightly below 30 days, such a hospital would be covered by the rule previously proposed, as an acute care hospital.

The Board has considered the comments submitted at this stage of the proceeding, pertaining to rehabilitation hospitals, and has decided that sufficient questions have been raised about appropriate units at such facilities that the rule should not be applied to rehabilitation hospitals. Many of the reasons given by the Board in NPR II for the exclusion of psychiatric hospitals (NPR II at 33929–30) now appear applicable to rehabilitation hospitals as well. Thus, for example, it appears that RNs may not be identifiable as the primary professional providers of patient care; RNs and other employee classifications function somewhat differently because patients are not as acutely sick as in other types of hospitals, and because different methods of treatment appear required for rehabilitative care; and around-the-clock efforts may be more extensively required of all professional groups, and perhaps other employees as well. The Final Rule will not, therefore, cover rehabilitation facilities that have been accredited as such by either JCAHO or CARF, regardless of the average length of patient stay.

With respect to inpatient drug and alcohol treatment centers, it is possible they would be excluded either by (a) the definition of "acute care," relating to length of patient stay; or (b) the new exclusion for rehabilitation hospitals generally. No case has been made for exclusion of all drug and alcohol treatment facilities as a class, and regardless of whether they are hospitals. However, if particular drug and alcohol facilities are not hospitals, the rule is not intended to cover them. For purposes of clarification we have decided to include in the rule a definition of "hospital," apart from the definition of "acute care."

[7] The same commenter requests the inclusion of non-acute care facilities such as HMO's, for the same reason. We similarly reject this request.

The definition shall be that contained in the Medicare Act, currently to be found at 42 U.S.C. 1395x(e), as revised 1988, and incorporated by reference in the Final Rule's definitions.

X. Miscellaneous Problems

(a) *Definition of "acute care."* AFL contends that use of the "acute care" definition in NPR II might "skew" the average length of stay if a hospital has a large number of long term beds or swing beds. AFL points out that AHA alternatively defines a "short term" hospital as one in which "over 50 percent of all patients are admitted to units where the average length of stay is less than 30 days." In view of the very high patient acuity level in hospitals today, we doubt that there would be many situations in which a sufficient number of long-term days by a few patients would skew the average. However, we agree with AFL that the Board's intention may be better realized by addition of the alternative definition. One long-term patient in a small, otherwise acute care hospital should not serve to define the character of the hospital. Accordingly, we shall revise the Final Rule to encompass the alternative definition as well.

(b) AFL suggests that parties may try to persuade the Board that, even though a facility is not "primarily" any one of the excluded types of institutions, it still is not "primarily" an acute care hospital, perhaps because it has such a variety and/or multiplicity of other types of units it is not "primarily acute care," but rather some other amalgam type of institution. The concern of this commenter may be well placed. Many of today's hospitals have a number of other types of units, such as outpatient clinics, nursing care units, etc., and the Board did not intend to exclude such hospitals from coverage of the rule unless any one of the excluded ancillary services predominated. Nor did the Board intend to permit a hospital to argue successfully that since the number of its outpatient visitors exceeded the number of its over-night (acute care) patients, it was not an acute care hospital, and therefore not subject to the rules. In order that there not be unintended litigation, we shall, in the Final Rule, delete the initial reference to the primary purpose of the hospital.

(c) AFL suggests that the Board establish a reference point for average length of stay, such as "the most recent twelve months preceding receipt of a representation petition for which data its readily available." We doubt that, with respect to this issue, individual hospitals will substantially vary depending on which 12-month period is uitilized. However, for purposes of clarity, we shall revise the rule to encompass this suggestion.

(d) AFL further suggests that, where a petition is filed under the rule, and a hospital claims not to meet the definition of "short-term hospital," the burden should be on the hospital to produce the evidence, since the records would be in its sole control. The AFL is suggesting a *Tropicana*-type rule (*Tropicana Products, Inc.*, 122 NLRB 121 (1958)) for use in situations in which a hospital does not come forth with the necessary information. We trust this will not prove to be a major concern, since in the normal case it will be obvious whether a hospital is acute care or not; stipulations should usually be obtainable. However, in order to encourage the party in sole possession of the records to cooperate, we shall amend the proposed rule to provide that, where the employer does not, after issuance of a subpoena, produce records sufficient for the Board to determine the facts, the Board may presume the employer is an "acute care hospital."

(e) AFL urges the Board to reconsider and hold cases pending the effective date of the Final Rule. Alternatively, it urges the Board to use its new empirical knowledge and, for example, grant RN units even under the latest dispartiy of interests test. The same point is made, in more detail, by Comment 1710, American Nurses Association (ANA). The Board has not held cases pending the effective date of the Final Rule (see, e.g., *Middletown Hospital Association*, 291 NLRB No. 79 (Oct. 28, 1988)), although parties themselves may have refrained from bringing cases during this interim period; few have come to the Board since NPR II. Whatever the merits of the AFL's suggestion, and that of ANA, it is now moot.

(f) AFL suggests that, "to make the rule consistent with the preamble, it should state that a unit may be combined when petitioned for by a union. This would preclude an employer from arguing that only a combination unit is appropriate." That is, of course, the intent of this provision of the rule, as explained, with citations, in NPR II at 33932 (Sec. XIX, Combined Units). The longstanding principle of *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950) (cited NPR II at 33932) continues to apply, and we shall make the required addition to the rule to clarify this point.

XI. Placement Decisions

Comment 1107, American Association of Nurse Anesthetists, asks for case-by-case consideration of whether certified nurse anesthetists properly belong in physicians' units or RN units. Such consideration will, of course, continue to occur, as the Board implied in NPR (at 25146, noting that some day in the future perhaps rulemaking would be utilized to determine unit composition), and NPR II (at 33926, stating "The precise placement of particular classifications which may be disputed in a particular case, is, for the time being, left to the case-by-case adjudicative approach.")

For the same reasons, we deny the request of American Society of Clinical Pathologists (Comment 1329) to clarify the rule to specify that ASCP-certified medical lab technologists are to be included in "other professional" units, and certified medical lab technicians are to be included in technical units. The Board in this rulemaking proceeding at the outset disclaimed any intention to determine placement issues (NPR at 25146), and it would be inappropriate to deviate from this stated intention, even if the record were sufficiently complete to permit us to do so.

XII. Extraordinary Circumstances

AFL suggests that some of the limitations on the extraordinary circumstances exception set forth in the Supplementary Information accompanying NPR II (Section XX at 33932–3) be incorporated into the Final Rule. AFL suggests, e.g., that the rule should provide:

> Extraordinary circumstances exist only where a hospital is shown to be uniquely situated such that application of the rule would be accidental or unjust. Variations among acute care hospitals that were considered by the Board in promulgating this rule do not, alone or in combination, constitute an extraordinary circumstance.

AFL also asks that the rule make it clear that multi-site units are not an exception. The Board has considered these suggestions, but fails to see the necessary for including these matters in the Final Rule.

Several commenters suggest that the extraordinary circumstances exception is so narrow as to be useless. AHA argues that, because of the narrowness of the exception, parties would be deprived of due process. (Comment 1711.) However, the case cited for that proposition, *Jackson Water Works, Inc.* v. *Public Utilities Comm.*, 793 F.2d 1090, 1097 (9th Cir. 1986), merely states as a general proposition that "the due process clause guarantees an aggrieved party the opportunity to present a case and have its merits fairly judged (citations omitted). [S]ome form of 'hearing' is required before a person is deprived of a protected property interest." Aside from the question whether a constitutionally-protected

"property" interest is involved when the Board makes a unit determination in a representation proceeding, it is clear that the hearing required by section 9(a) of our Act will continue to be available where the parties do not consent to an election. Supra, Section II, and, specifically, n. 2. We note, coincidentally, that the majority in *Jackson* held that the state's eminent domain procedure was constitutional, even though it provided for no right of appellate review. See also Comment 1330, Taft, Stettinius & Hollister. Comment 1087, California Association of Hospitals and Health Systems suggests that the extraordinary circumstances exception is so narrow that its inclusion is "a charade."

We do not agree with these commenters' characterizations. The purpose of the rulemaking procedure has been to gather a large amount of information, and then to set forth unit determinations consistent with the information gathered, appropriate for collective bargaining purposes, and consistent with the Board's obligations under the statute. The Board's experience since 1974, as documented in Board Exhibit 5, as amended, has been that, even under adjudication, with the facts of each individual case recited in records of substantial length and expense, the Board has almost always reached the same result. That being true, avoidance of unnecessary litigation in each case has been one goal of the rulemaking undertaking. The extraordinary circumstances exception has had to be crafted in such a way as to satisfy due process by allowing for litigation where the circumstances warrant, i.e. are truly extraordinary—but at the same time precluding litigation where the arguments are merely repetition of matters already considered, such as the team approach, integration of functions, cross training, increased specialization, recent cost containment measures, etc.

We have, in this SUPPLEMENTARY INFORMATION, provided specifically for one "extraordinary circumstance," viz. a requested unit of five employees or fewer. There will undoubtedly be others, but we do not expect them to be frequent. We find nothing inconsistent with due process in the "extraordinary circumstances" exception crafted into the Final Rule. We reaffirm the scope of the extraordinary circumstances exception as set forth in NPR II.

XIII. Proliferation

A number of commenters dispute the Board's conclusions on proliferation in NPR II at 33933–94. Comment 1087, California Association of Hospitals and Health Systems, takes issue with the Board's analysis in NPR II, that Congress was concerned with patterns such as in newspaper and construction industries of fifteen or more units at a workplace. That commenter argues that Congress' failure to specify a number does not justify the Board's speculation that eight units would satisfy Congressional concern. Comment 1330, Taft, Stettinius & Hollister, contends that the Board erroneously analyzed the legislative history. Taft, Stettinius believes that the parties did not reach a compromise whereby employers gave up statutory limitations on the number of units in return for stroke-restricting provisions; neither did unions win the right to use the five-unit specification as a floor. Comment 1686, American Society for Personnel Administration, contends that no other industry has as many units as the Board has given in this proceeding. Comment 1711, AHA, argues that the Board errs in believing that Congress merely wanted the Board to avoid patterning health care units after the newspaper or construction industries, stating that this argument was rejected by the Second Circuit in *Mercy Hosp. Assn.*, 606 F.2d 22, 27 (2d Circ. 1979), cert. den. 445 U.S. 971 (1980), which said that even application of the normal industrial unit criteria could impede effective delivery of health care services.

The subject of what Congress meant has been debated since 1974, with opinions varying from those expressed by the Board in NPR II, to those expressed by some courts as indicated above, to those expressed by Judge Edwards in *Electricial Workers IBEW Local 474 (St. Francis Hospital)* v. *NLRB*, 814 F.2d 697 (D.C. Cir., 1987) to the effect that varying expressions of Congressional intent are not legally binding upon the Board since the statutory language was not changed.

We are inclined to agree with Judge Edwards that, since section 9(a) was not changed in 1974, varying expressions by legislators on what they intended do not necessarily rise to a mandate requiring, for example, a disparity of interests standard.[8] Contrary to the understanding of The American Society for Personnel Administration, Comment 1686, it is not true that "with the limited exception of the construction industry, virtually no other industry covered by the NLRA must cope with as many as eight bargaining units." In industrial settings, there is the potential for far more than eight appropriate bargaining units. The following are but a representative sampling of the separate bargaining units found appropriate by the Board in various cases:

1. Drivers [9]
2. P & M (production and maintenance) employees [10]
3. Office clericals [11]
4. Guards [12]
5. Technical employees [13]
6. Driver-salesmen [14]
7. Toolroom employees [15]
8. Maintenance department employees [16]
9. Warehouse and service employees [17]
10. Patternmakers [18]
11. Electricians [19]
12. Welders [20]
13. Tool designers [21]
14. Crane operators [22]
15. Powerhouse employees [23]
16. Millwrights [24]
17. Attorneys [25]
18. First-aid department employees [26]
19. Chemists, chemical engineers, and engineers [27]
20. Garment cutters and spreaders [28]
21. Industrial art designers [29]
22. Knitters [30]
23. Auto mechanics [31]

[8] *Accord:* Kilgour, *The Health-Care Bargaining Unit Controversy: Community of Interest versus Disparity of Interest*, 40 Lab. L.J. 61 at 92 (1989). See also *The D.C. Circuit Struggles With Standards of Reviewability*, 56 Geo. Wash. L. Rev. 960 (1988).

[9] *Memphis Furniture Manufacturing Co.*, 259 NLRB 401 (1981).

[10] *Comet Corp.*, 261 NLRB 1414 (1982).

[11] *Robbins & Myers*, 144 NLRB 295 (1963).

[12] *Bonded Armored Carrier*, 195 NLRB 346 (1972).

[13] *Loral Corp.*, 200 NLRB 1019 (1972).

[14] *Bardahl Oil Co.*, 163 NLRB 260 (1967).

[15] *McCulloch Corp.*, 189 NLRB 76 (1971).

[16] *Verona Dyestuff Div.*, 225 NLRB 1159 (1976).

[17] *A.B. Dick Co.*, 230 NLRB 257 (1977).

[18] *Mueller Industries*, 132 NLRB 489 (1961).

[19] *E.I. DuPont de Nemours and Co.*, 192 NLRB 1019 (1971).

[20] *Aerojet General Corp.*, 128 NLRB 313 (1960).

[21] *Douglas Aircraft Co.*, 157 NLRB 791 (1966).

[22] *Louisiana Industries;* 15–RC–2441, cited at 49 LRRM 1414 (1961).

[23] *American Can Co.*, 131 NLRB 909 (1961).

[24] *National Container Corp.*, 99 NLRB 1492 (1952).

[25] See *Westinghouse Air Brake Co.*, 121 NLRB 636 (1958). Cf. *Legal Action of Wisconsin*, 281 NLRB 1095 (1985).

[26] *Ladish Co.*, 178 NLRB 90 (1969). And see *Westinghouse Air Brake Co., supra* (nurses).

[27] *Firestone Tire & Rubber Co.*, 181 NLRB 630 (1970). See also *Westinghouse Air Brake, supra.*

[28] *Benjamin & Jones*, 133 NLRB 768 (1961).

[29] *Chrysler Corp.*, 90 NLRB No. 285 (1950), not reported in Board volumes; reported at 26 LRRM 1415 (1950).

[30] *Morganton Full Fashioned Hosiery Co.*, 115 NLRB 1267 (1956).

[31] *Dodge City of Wauwatosa*, 282 NLRB No.71 (1986).

These twenty-three (there are at least as many more) potential units are, of course, unlikely to arise in any single establishment, just as it is unlikely that all eight potential appropriate units will occur in any given hospital [32]. In fact, based on our experience following the 1974 health care amendments, we anticipate that most of the organizing will occur in RN units, technical units, skilled maintenance units, service and unskilled maintenance units, and, possibly, business office clerical units. Many physicians in hospitals are independent contractors, and there have been only one or two published cases involving separate physicians' units since 1974 (NPR, 52 FR 25147; NPR II, 53 FR 33905). Although a separate guard unit is mandated by the Act, we have had few if any hospital guard unit cases, perhaps because some hospitals contract out their guard service. The unit of all-other professionals is also required by the Act, if, as we have found, RNs and physicians constitute separate appropriate units; however, we have not had a large number of other professional units.

The original rulemaking record provided strong empirical support for all the units ultimately proposed in NPR II. In addition to the other factors mentioned in NPR II in support of the individual units, the separate labor markets for the RNs, skilled maintenance employees, and business office clericals favored separate representation for them. The legislative history showed "proliferation" was opposed by Congress because it was feared that would lead to numerous work stoppages, jurisdictional disputes, and wage whipsawing and leapfrogging. However, as was amply documented in NPR II, multiple units have not been shown to cause an unusual number of work stoppages, nor have they been shown to have caused jurisdictional disputes, wage whipsawing, or leapfrogging. Little additional evidence on these points was introduced during the current round of comments, except that several commenters expressed the view that, since there have never, or rarely, been eight bargaining units in the health care field, the Board's evidence as to costs, strikes, bargaining success, and unionization is irrelevant. (See, e.g., Comment 1711, AHA; Comment 1081, Wausau Hospital. See also Comment 1044, Missouri Hospital Association, which argues that early units were recognized voluntarily because, prior to 1974, it was known that individual units could not strike.)

We do not agree that the evidence acquired during this proceeding is irrelevant. For one thing, even under adjudication, whether strikes, whipsawing, or jurisdictional disputes will result if an initial organizational effort succeeds carries with it a greater degree of speculativeness than is alleged here; under adjudication of individual cases, no evidence whatever can be adduced as to the facility under consideration, whereas, at least here, past experience in the industry generally can be and has been considered. The fact is that in the decade between 1974 and 1984 there were, generally, eight units recognized as appropriate under Board case law (including the statutorily-mandated separate unit of guards.) Despite continual uncertainty as to the proper standard, there was considerable organizational activity, and the evidence presented to us is that there were virtually none of the disruptive consequences which concerned Congress during the 1974 debates.

Comment 725, Greater Baltimore Medical Center, argues that, where there are existing units, more than eight may ultimately be found appropriate. While that is a theoretical possibility because section 103.30(c) of the rule technically removes such facilities from the literal reach of the rule, section XV of NPR II refers to the principle of *Levine Hospital of Hayward*, 219 NLRB 327 (1975), which in effect prohibits residual or fractional units in health care facilities. The Board in NPR II deferred this issue to adjudication. Our stated intention will be, insofar as possible, to conform new units in such situations to the proposed rule.

As for the question whether the units found appropriate are too many, or proliferative, we do not believe that that was a question Congress wished us to answer in the abstract—as if, for example, "x" number of units are automatically proliferative, but "y" are not. Rather, we believe it has been incumbent upon us to carefully examine the exhaustive rulemaking record furnished by numerous parties from all sectors of the health care industry, and then to make a determination on appropriate units consistent with that evidence, consistent with our self-expressed desire to avoid a proliferation of units, and consistent with a requirement that these units not be likely to produce the unwanted results of repeated work stoppages, jurisdictional disputes, wage whipsawing, and other related evils. We believe we have done so and, for that reason, conclude that our determination is not unduly or reasonably proliferative in any meaningful usage of that phrase.[33]

Our action in exempting units of five or fewer employees from the coverage of the rule is prompted by our concern about proliferation. Comments about the effects of a number of small units in small hospitals convince us that they could pose a serious proliferation potential. It is for that reason that we have excepted these small units from coverage of the rule. We note that the "small unit" exception is not limited to small hospitals. It could also have the effect of reducing the number of units in large health care institutions.

In addition to the foregoing, we continue to believe that Congress was concerned with the Board's not repeating the pattern of bargaining in such industries as newspapers and construction, and affirm those additional portions of NPR II which discuss this point.

XIV. Regulatory Flexibility Act

No comments after NPR II addressed this issue. We reaffirm our prior certification. (53 FR 33934)

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[32] In Comment 1142, Bricker & Eckler alleges that attorney Roger King's testimony concerning other-professional units was taken out of context. It is alleged that King intended only to show that there was very little organizing among RNs in Ohio: i.e., such units exist in only 16 of Ohio's 180 private hospitals. However, King also testified that, in Ohio, only one separate other-professional unit exists (NPR II at 33908). We believe that King's testimony does support the conclusion for which it was cited, that, in Ohio, the existence of separate units of RNs has not led to similar, separate units of all other professionals.

[33] We note that our unit determinations in this proceeding are not inconsistent with those in the cases cited with approval in the Senate Committee Report (S. Rept. 93-766, 93d Cong., 2d sess. 5 [1974]). Thus, in *Four Seasons Nursing Center of Joliet*, 208 NLRB 403 (1974), the Board found inappropriate a three-employee unskilled maintenance unit in a nursing home. Our rule does not cover nursing homes, and three-employee units are considered an "extraordinary circumstance" even in acute care hospitals. In addition, maintenance employees who primarily empty trash, replace light bulbs, and move furniture are included in service units. In *Woodland Park Hospital*, 205 NLRB 888 (1973), the Board declined to find appropriate a separate unit of X-ray technicians. Our rule would, likewise, find inappropriate a separate unit of X-ray technicians. (The Board in *Woodland* did not have occasion to consider the appropriateness of an all-technical unit, since no request for review was filed to the regional director's ruling on that issue.) Finally, in *Extendicare of West Virginia, Inc., d/b/a St. Luke's Hospital*, 203 NLRB 1232 (1973), the Board found appropriate a separate unit of licensed practical nurses, but included the seven remaining technicals with the service and maintenance employees. Our rule would not find appropriate a separate unit of licensed practical nurses, who in prior Board cases have been found to be technical employees, but would rather group all technical employees together in a separate unit.

XV. Dissenting Opinion

Member Wilford W. Johansen dissents from establishing health care bargaining units through a rulemaking procedure.

In his view rulemaking in the health care industry is neither appropriate nor desirable, for several reasons.

He believes the language of the Act itself forecloses rulemaking for particular units. Section 9(b) of the Act requires that "The Board *shall* decide *in each case*" what the appropriate unit shall be, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by" the Act. Under basic rules of statutory construction, he reads that language as mandatory rather than permissive. He also believes that the Board cannot satisfactorily fulfill its statutory obligation by relegating that specialized, decisional function to rulemaking procedures. Thus, while rulemaking is a desirable and even a necessary portion of the Board's functions in some areas, in his opinion, this is not one of those areas. It is important to remember that Congress did *not* amend section 9 when it enacted the Health Care Amendments in 1974. If Congress had intended that the Board abandon its then almost 40-year old decisional approach and instead embark on a wholly new procedure for determining appropriate units in portions of the health care industry (and only in that industry) it surely would have said so explicitly. It did not do so; nor did it even implicitly suggest such action. The Board "rules" referred to by the majority as grounds for this action (i.e., *Excelsior* list, contract, bar, etc.) in his view simply do not support such a radical departure from well established precedent. They were themselves arrived at decisionally, and they did not involve unit determinations. Nor is he persuaded by reference to interpretation of different functions by other agencies.

Even assuming that abandoning the Board's decisional format for determining the appropriate unit in each case is a permissible exercise, however, he would not deem rulemaking with regard to health care units to be either necessary or desirable.

The disagreements between members of the Board or between one Board majority and another, have focused on questions concerning the meaning of the statute, analysis of the legislative history, and the interpretation of Congress' intent. The differences between the Board and various courts of appeals and the conflicts among the courts of appeals have involved not only those questions which divided the Board, but also issues concerning the proper scope of review, and the deference to be properly accorded to the Board's reading and interpretation of the Act—the Board's primary function and responsibility.

The appropriate procedure to resolve questions surrounding Congress' intent, the proper scope of review, and the Board's duty and authority in the exercise of its expertise under the statute, is to submit those questions to the Supreme Court, the final arbiter on issues of this nature. That is particularly true in this area, because the Board has received criticism from Circuit Courts at both ends of the spectrum. Most of the disagreement has centered around application of the traditional "community of interest" standard versus a separate "disparity of interest" test for evaluating appropriate units in health care facilities. Different courts at different times have rejected each of these approaches. Thus, it seems especially appropriate to submit these issues to the Supreme Court to resolve the split in the circuits. That process best serves the interests of the parties, the general public, and the Board.

Other factors make the establishment of particular health care units through rulemaking at best inadvisable. Those courts that have deemed the Board's approach to health care units to be too rigid will continue to criticize such units established through rulemaking. And, because unit determinations established by a predetermined set of rules are inherently less flexible than those arrived at by decision in specific cases, it must be anticipated that criticism by some courts will intensify; on the ground that a result reached by the Board was not derived through application of its institutional expertise in a particular factual situation. Indeed, the Board must concede the validity of at least some such criticism. That is so not only because the rules themselves are less flexible, but also because the nature of the evidence on which the rule is based is in turn more generalized—primarily anecdotal and statistical—and, therefore, lacks the quality of pertinent evidence regarding a specific situation which lies at the core of the decisional process.

Another reason to reject the rule is the information which the Board has obtained during this process. As a result of that experience, the Board has already seen fit to revise the proposed rules substantially. That fact in itself is a compelling reason to retain the Board's traditional decisional format, even if it were not required.

There have been considerable changes from one year to the next in this proceeding. Nursing homes and rehabilitation hospitals have been exempted from operation of the rule. The proposed "100-bed" distinction has been eliminated, along with the separate unit configuration for small hospitals. Thus, the number of proposed units affecting small hospitals has changed dramatically; and the number of units in large (now all) acute hospitals has been expanded by the addition of separate groupings for maintenance, and business office clerical employees. We do not know what will happen next year. Will the heavy burden of proof required under the "extraordinary circumstances" proviso virtually preclude evidence that the units established in this proceeding make little practical sense in a particular case? Will the Board need to indicate—again—that it might have proceeded differently if there had been more, or better, information when the rule was made? And, in that case, will the Board, the parties, and the public have to undergo another two year exercise in order to amend the rule to accord with what the Board then knows (or believes it "knows")? Such uncertainties neither benefit the Board nor any other constitutency. Certainly they do not effectuate the purposes of the Act.

For all these reasons, Member Johansen would vacate the notices of rulemaking and submit the issues to the Supreme Court for resolution.

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

Regulatory Text

For the reasons set forth at 52 FR 25142–25145 (through Section IV), and also 53 FR 33900–33934, as supplemented and modified by this Supplementary Information, 29 CFR Part 103 is amended as follows:

PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

2. Subpart C, consisting of § 103.30, is added to read as follows:

Subpart C—Appropriate Bargaining Units

§ 103.30 Appropriate bargaining units in the health care industry.

(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances

and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:

(1) All registered nurses.

(2) All physicians.

(3) All professionals except for registered nurses and physicians.

(4) All technical employees.

(5) All skilled maintenance employees.

(6) All business office clerical employees.

(7) All guards.

(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

Provided That a unit of five or fewer employees shall constitute an extraordinary circumstance.

(b) Where extraordinary circumstances exist, the Board shall determine appropriate units by adjudication.

(c) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to sec. 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

(d) The Board will approve consent agreements providing for elections in accordance with paragraph (a) of this section, but nothing shall preclude regional directors from approving stipulations not in accordance with paragraph (a), as long as the stipulations are otherwise acceptable.

(e) This rule will apply to all cases decided on or after May 22, 1989.

(f) For purposes of this rule, the term:

(1) "Hospital" is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 1395x(e), as revised 1988);

(2) "Acute care hospital" is defined as: either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than thirty days. Average length of stay shall be determined by reference to the most recent twelve month period preceding receipt of a representation petition for which data is readily available. The term "acute care hospital" shall include those hospitals operating as acute care facilities even if those hospitals provide such services as, for example, long term care, outpatient care, psychiatric care, or rehabilitative care, but shall exclude facilities that are primarily nursing homes, primarily psychiatric hospitals, or primarily rehabilitation hospitals. Where, after issuance of a subpoena, an employer does not produce records sufficient for the Board to determine the facts, the Board may presume the employer is an acute care hospital.

(3) "Psychiatric hospital" is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 1395x(f)).

(4) The term "rehabilitation hospital" includes and is limited to all hospitals accredited as such by either Joint Committee on Accreditation of Healthcare Organizations or by Commission for Accreditation of Rehabilitation Facilities.

(5) A "non-conforming unit" is defined as a unit other than those described in paragraphs (a) (1) through (8) of this section or a combination among those eight units.

(g) Appropriate units in all other health care facilities: The Board will determine appropriate units in other health care facilities, as defined in section 2(14) of the National Labor Relations Act, as amended, by adjudication.

Dated, Washington, DC, April 18, 1989.

John C. Truesdale,

Executive Secretary.

[FR Doc. 89-9654 Filed 4-20-89; 8:45 am]

BILLING CODE 7545-01-M

federal register

Friday
April 21, 1989

Part VIII

Department of Energy

Waste Isolation Pilot Plant; Availability of Draft Supplement to the Final Environmental Impact Statement; Notice

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant; Availability of Draft Supplement to the Final Environmental Impact Statement

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of the draft Supplement to the final environmental impact statement and of public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft Supplement to the Final EIS (DOE/EIS–0026 DS) for the Waste Isolation Pilot Plant (WIPP). The purpose of the Supplement (SEIS) is threefold:

1. Present information, data, and analyses that have become available since the 1980 Final EIS (FEIS);

2. Address proposed changes to the action described in the Record of Decision (46 FR 9162) of January 28, 1981; and

3. Further the purposes of the National Environmental Policy Act (NEPA), which include providing opportunities for public review of information bearing on environmental impacts.

DOE invites written and oral comments on the draft SEIS from interested persons, organizations, and agencies. Public hearings will be held in New Mexico, where the WIPP has been constructed, and at several locations along major transportation routes to the WIPP.

DATES: Written comments should be postmarked by June 20, 1989, to ensure consideration in preparation of the Final SEIS. Written and oral comments will receive equal consideration. Oral comments will be accepted at the public hearings (schedule given below). Persons who wish to make comments should notify DOE's WIPP SEIS Project Office at the address below not later than one week before the hearing to be placed on the list of commenters.

ADDRESSES: Requests for copies of the FEIS and draft SEIS, requests to present oral comments at the public hearings, and requests for further information concerning the draft SEIS should be directed to: W. John Arthur, III, Project Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road, NE. 7th Floor, Albuquerque, NM 87110.

Comments on the draft SEIS should also be sent to this address, adding "Attention: SEIS Comments."

Requests to present oral comments at the public hearings, and requests for copies of the FEIS and the draft SEIS can be made 24 hours a day at: (800) 274–0585 or (505) 889–3038.

Place leave your name, address, date, time, phone number, and the nature of the request.

For general information on the procedures DOE follows in complying with the requirements of NEPA, contact: Carol Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–4600.

SUPPLEMENTAL INFORMATION:

I. Background

The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for retrievably-stored and newly-generated transuranic (TRU) radioactive waste from various DOE defense program facilities. The repository has been excavated from a bedded salt formation 2150 feet below the land surface. The WIPP lands are under the jurisdiction of and managed by the U.S. Department of the Interior's Bureau of Land Management (BLM). The BLM is a "cooperating agency" (see 40 CFR Part 1501.6) in the development of the SEIS. The DOE has submitted to the BLM an application for withdrawal of the WIPP site lands from the public domain.

Congress authorized the DOE to build the WIPP to demonstrate the safe disposal of radioactive wastes resulting from its national defense activities. Since 1970, all defense-generated TRU wastes have been stored at various DOE defense facilities using methods that facilitate retrieval. Continued storage at these facilities has raised public concerns about health and environmental protection. In addition, the filling of available storage capacity for radioactive waste at certain sites may hamper defense production operations vital to national security.

DOE published the FEIS for the WIPP (DOE/EIS–0026) in October 1980, followed by the Record of Decision (ROD) in January 1981 (46 FR 9162). Subsequently, DOE proceeded with construction of the WIPP facility.

II. Supplement Preparation

On February 17, 1989, the DOE announced (54 FR 7251) its intent to prepare a supplement to the WIPP FEIS to reflect proposed changes in the project, and new information, assumptions, or methods of analysis since publication of the FEIS. The draft SEIS assesses potential environmental consequences of the current proposed action and reasonable alternatives. The post-FEIS changes and information considered in the SEIS fall mainly in the following areas:

Changes in the sources of TRU wastes. In the 1980 FEIS, only TRU wastes from the Idaho National Engineering Laboratory and Rocky Flats Plant were analyzed for disposal in the WIPP. Since then, the DOE has proposed that TRU wastes from two other defense facilities, Hanford Operations and the Savannah River Plant, would be disposed of at the WIPP. The potential impacts of transport to WIPP, and emplacement of waste from six additional facilities, are also analyzed in the SEIS.

Changes in the volume of TRU waste inventory. The DOE estimates a smaller volume of TRU waste because of a refinement in inventory sampling methods; a change in the definition of TRU waste; changes to the WIPP Waste Acceptance Criteria; and anticipated facility waste treatment process modifications.

Changes in the composition of the TRU waste inventory. The inventory of TRU wastes now includes high-curie and high-neutron wastes, and DOE no longer proposes to conduct tests at WIPP using high-level wastes.

Consideration of hazardous chemical constituents of the inventory. Hazardous chemical constituents in the radioactive waste inventory (which, together, are referred to as "mixed" wastes) were not considered in the 1980 FEIS, but are assessed in the SEIS. The hazardous chemical constituents of this mixed waste constitute a small fraction of the total waste and consist primarily of lead from radiation shielding and residual organic solvents.

Changes in transportation modes, routes, and packaging. In the FEIS, DOE anticipated using a mixed transport mode (75% train and 25% truck). The SEIS considers transport by truck (100 percent) and "maximum" train (i.e., train transport from eight facilities and, because they lack rail heads, truck transport from Los Alamos National Laboratory, and the Nevada Test Site). The design of the "contact-handled" TRU waste packaging has changed from the Type A (TRUPACT–I) container, proposed in 1980, to the Type B (TRUPACT–II) container to be certified by the Nuclear Regulatory Commission.

Implementation of a Test Phase. DOE is proposing to conduct a Test Phase to reduce uncertainties associated with two factors that may affect repository performance—gas generation and brine in-flow—and to demonstrate effective waste handling procedures.

The SEIS analyzes DOE's proposed action and two alternatives, one of which is a "no action" alternative required by the Regulations of the

Council on Environmental Quality (40 CFR 1502.14(d)). The proposed action consists of two parts: a Test Phase and a Disposal Phase. The Test Phase would last approximately five years, during which a maximum of 10 percent of the facility design capacity for waste would be brought to the WIPP and emplaced underground in a retrievable manner. (The DOE expects to use less than 10 percent of capacity, but evaluates 10 percent in the SEIS for purposes of bounding environmental impacts.) If the Test Phase results in a determination that WIPP satisfies environmental and operational safety requirements, the Disposal Phase would follow. The DOE will not use the WIPP as a permanent waste repository unless and until there is a determination, based on the accumulated scientific and operational data, that waste operations and disposal at WIPP comply with the Environmental Protection Agency's public health and environmental standards (40 CFR Part 191), and with other applicable Federal, State, and local requirements.

The Test Phase is designed for two purposes: to obtain information relevant to assessing the long-term performance of WIPP, and to demonstrate DOE's ability to perform safely the operations necessary to transport waste to, and emplace waste in the WIPP. The Test Phase would involve tests of different scales, or sizes, designed to collect data underground, in conditions to which emplaced waste would be subjected if the facility should become operational.

The second alternative action analyzed in the SEIS is to conduct only those tests described in the proposed action that can be performed at a location other than underground at WIPP until there is a determination of compliance with regulatory requirements. The "bin-scale" tests proposed to be conducted with TRU waste in the WIPP underground facility would be conducted at a location other than underground at WIPP. The tests would be conducted in a specially-engineered above-ground facility designed for this purpose.

In effect, this alternative is for a Test Phase without waste emplaced in the WIPP underground.

III. Comment Procedure

A. Availability of Draft SEIS

Copies of the draft SEIS and the 1980 Final EIS have been distributed to officials of Federal, State, and local governments, environmental organizations, and individuals known to be interested in, or affected by, the proposed project. Additional copies may be obtained from the DOE WIPP SEIS Project Manager at the address given above.

The draft SEIS, all references in the SEIS, and the FEIS are available at the following DOE Public Reading Rooms and libraries:

Department of Energy-HQ, Public Reading Room, Room 1E-190 Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6020.

U.S. Department of Energy-ID, Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, ID 83402, (208) 526-1144.

U.S. Department of Energy-NV, Public Reading Room, 2753 South Highland Street, Las Vegas, NV 89109, (702) 295-1274.

U.S. Department of Energy-OR, Public Reading Room, Federal Building, 200 Administration Road, Oak Ridge, TN 37830, (615) 576-1216.

National Atomic Museum, Public Reading Room, Wyoming Boulevard South, Kirtland Air Force Base, Albuquerque, NM 87115, (505) 844-4378.

U.S. Department of Energy-RL, Public Reading Room, Hanford Science Center, 825 Jadwin Avenue, Richland, WA 99352, (509) 376-8583.

U.S. Department of Energy-SR, FOI Publication/Document Room, University of South Carolina—Aiken, Gregg—Graniteville Library, 171 University Parkway, Aiken, SC 29801, (803) 725-1408.

U.S. Department of Energy-SFO, Public Reading Room, 1333 Broadway, 7th Floor, Oakland, CA 94612, (415) 273-4428.

U.S. Department of Energy-CH, Public Reading Room, 9800 South Cass Avenue, Building 201, Argonne, IL 60439, (312) 972-2010.

Zimmerman Library, Government Publications, University of New Mexico, Roma Avenue and Yale Boulevard, Albuquerque, NM 87131, (505) 277-5441.

Carlsbad Public Library, Public Document Room, 101 South Halagueno Street, Carlsbad, NM 88220, (505) 885-6776.

New Mexico State Library, 325 Don Gasper, Santa Fe, NM 87503, (505) 827-3800.

Santa Fe Public Library, 145 Washington Avenue, Santa Fe, NM 87501, (505) 984-6780.

Libraries receiving the draft SEIS and the FEIS:

Alabama Public Library Service, 6030 Monticello Drive, Montgomery, AL 36104, (205) 277-7330.

Arkansas State Library, 1 Capitol Mall, Little Rock, AR 72201, (501) 682-1527.

Arizona Library, Archives and Public Records, 1700 W. Washington, Phoenix, AZ 85701, (602) 542-4159.

California Libraries Division, Library and Courts Building, 914 Capitol Mall, Sacramento, CA 95809, (916) 445-8833.

Government Publications, Norlin Library, University of Colorado/Boulder, 18th and Colorado Streets, Boulder, CO 80309, (303) 492-8784.

Denver Public Library, Government Documents Room, Second Floor, 1357 Broadway, Denver, CO 80203-2165, (303) 571-2000.

Georgia State Library, 301 Judicial Building, Atlanta, GA 30334, (404) 656-3468.

Library—Region 2, U.S. Nuclear Regulatory Commission, 101 Marietta Street, Suite 3100, Atlanta, GA 30303, (404) 331-5518.

Idaho State Library, 325 W. State Street, Boise, ID 83702, (208) 334-5124.

Indiana State Library, 140 N. Senate Avenue, Indianapolis, IN 46204, (317) 232-3675.

Illinois Department of Nuclear Safety, 1035 Outer Park Drive, Springfield, IL 62704, (217) 524-5968.

Illinois State Library Division, 213 Capitol Building, Springfield, IL 62756, (217) 782-2994.

Legislative Research Library, State Capitol Building, 13th Floor, Baton Rouge, LA 70804, (504) 342-2923.

Louisiana State Library Office, 760 Riverside North, Baton Rouge, LA 70821, (504) 342-4923

Missouri State Library, 2002 Missouri Boulevard, Jefferson City, MO 65102, (314) 751-3615.

Mississippi Library Commission, 1221 Ellis Avenue, Jackson, MS 39209, (601) 359-1036

Mississippi Bureau of Geology, 2525 N. West Street, Jackson, MS 39216, (601) 354-6228

Nevada State Library and Archives, Federal Documents, Capitol Complex, 401 North Carson Street, Carson City, NV 89710, (702) 885-5160; (800) 922-2880

Ohio Library Board, 65 S. Front Street, Columbus, OH 43266, (614) 644-7061

Oklahoma Libraries Department, 200 NE 18th Street, Oklahoma City, OK 73105, (405) 521-2502

Oregon State Library, State Library Building, Court and Summer Streets, Salem, OR 98310, (503) 378-4277

South Carolina State Library, 1500 Senate Street, Columbia, SC 29201, (803) 734-8666

Silas Mason Company Inc., East Highway 60, Amarillo, TX 79177, (806) 477-3000

Texas Library and Archives Commission, 1201 Brazos Street, Austin, TX 78701, (512) 463–5460
Utah State Library, 2150 South 300 West, Suite 16, Salt Lake City, UT 84115, (801) 466–5888
State of Washington, Department of Ecology Library, Abbott Raphael Building, St. Martins College Campus, Olympia, WA 98504, (206) 459–6150
Washington State Library, State Library Building, 16th and Water Streets, Olympia, WA 98504, (206) 459–6150
Wyoming Library Department, Supreme Court Building, Capitol Avenue, Between 22nd and 24th, Cheyenne, WY 82002, (307) 777–6333.

B. Written Comments

Interested parties are invited to provide written comments on the draft SEIS to the DOE WIPP SEIS Project Manager at the address provided in the Summary, above. Envelopes should be marked "Attention: SEIS Comments." Comments should be postmarked no later than June 20, 1989, to ensure consideration in the final SEIS. Comments postmarked after June 20, 1989, will be considered to the extent practicable. Written and oral comments will be treated equally.

C. Public Hearings

1. Participation Procedures

The public is also invited to provide comments to the DOE on the draft SEIS at the scheduled public hearings. The hearings will not be judicial or evidentiary hearings. Advance registration for presentations will be accepted up to one week prior to the hearing date by telephone or by mail at the Office of the WIPP SEIS Project Manager listed in the Summary, above. Address mailings to the attention of "WIPP SEIS Hearing Registration." Requests to speak at a specific time will be honored, if possible. Elected officials and representatives of government agencies, Indian tribes, and interest groups will be given the opportunity to provide comments at the beginning of the hearings. The DOE may limit these speakers to 10 minute presentations if necessary to accommodate all who wish to speak.

People may register only themselves and should confirm the time they are scheduled to speak at the registration desk on the day of the hearing. Persons who have not registered in advance may register to speak at the hearings to the extent time is available. Commenters are asked to provide the DOE with written copies of their remarks, if possible.

2. Hearing Schedules and Locations

The hearings will begin at 9:00 a.m. and continue through the day and evening, with recesses for meals. Anyone may attend any session, but only registrants may provide comments. Hearings will be held at the following locations:

May 25, 1989 at
Atlanta Airport Hilton, 1031 Virginia Avenue, Hapeville, Georgia 30354 (404) 767–9000.
June 1, 1989 at
City Council Chambers, Boise City Hall, 150 North Capitol Boulevard, Boise, Idaho 83701, (208) 384–4422.
June 6, 1989 at
Regency Hotel, 3900 Elati Street, Denver, Colorado 80212, (303) 458–5555.
June 8, 1989 at
Vert Memorial Club Room, 345 Southwest 4th, Pendleton, Oregon 97801, (503) 276–6924.
June 13, 1989 at
Albuquerque Hilton, 1910 University Boulevard, NE., Albuquerque, NM 87102, (505) 884–2500.
June 15, 1989 at
Sweeney Convention Center, 201 West Marcy Street, Santa Fe, New Mexico 87504, (505) 984–6760.

3. Conduct of Hearings

Rules needed for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings. Clarifying questions regarding statements made at the hearings may be asked only by the presiding officer or DOE personnel. Commenters will not be cross-examined. A transcript of the hearings will be prepared, and the entire record of each hearing, including the transcript, will be retained by the DOE for inspection at the libraries and reading rooms listed above. A complete copy of the transcript will be provided to the BLM in its role as a cooperating agency.

Issued at Washington, DC April 19, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–9838 Filed 4–20–89; 11:10 am]
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Reader Aids

Federal Register

Vol. 54, No. 76

Friday, April 21, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13345-13504.....3
13505-13662.....4
13663-13834.....5
13835-14042.....6
14043-14198.....7
14199-14332.....10
14333-14618.....11
14619-14790.....12
14791-14924.....13
14925-15162.....14
15163-15354.....17
15355-15738.....18
15739-15912.....19
15913-16096.....20
16097-16352.....21

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5948.....13663
5949.....14329
5950.....14331
5951.....14617
5952.....14619
5953.....15157
5954.....15163
5955.....15357
5956.....15737

Executive Orders:
December 12, 1917 (Amended by PLO 6718).....14801
3053 (Amended by PLO 6715).....13524
4415 (Revoked by PLO 6716).....13524
6206 (Modified by PLO 6714).....13523
11222 (Revoked by EO 12674).....15159
12565 (Revoked by EO 12674).....15159
12635 (See Notice of Apr. 6, 1989).....14197
12674.....15159

Administrative Orders:
Memorandums:
April 13, 1989.....15361
Notices:
April 6, 1989.....14197
Presidential Determinations:
No. 89-12 of March 15, 1989.....15355

4 CFR

Proposed Rules:
21.....14361

5 CFR

213.....15639
872.....13665
873.....13665

7 CFR

2.....13505, 14043, 16097
17.....14199
58.....15165
220.....13605
354.....13506, 14621
401.....14201
406.....14205
910.....14050, 14925, 16097
911.....15168
915.....15168
925.....15169
946.....13835
955.....13666
979.....13507
982.....13508
985.....13509
1065.....15170
1106.....13836
1137.....13667
1230.....15913
1260.....15915
1745.....13345, 16194
1749.....13345, 16194
1750.....14622
1785.....13668
1807.....14333
1910.....14630
1924.....14333
1930.....14334
1942.....14333
1944.....14333, 14334, 14630
1951.....14637
1962.....14791
1980.....14333, 14791

Proposed Rules:
27.....15210
28.....15210
33.....15216
55.....13977
56.....13977
70.....13977
301.....15217
403.....14240
916.....14080
917.....14080
918.....15218
919.....13891
987.....13526
1007.....13692
1030.....15413
1036.....15413
1049.....13526
1079.....15417
1930.....14822
1944.....14822

8 CFR

103.....13513
245a.....13360

9 CFR

77.....15371
91.....15918
92.....15302
94.....14792
97.....13515, 14638

Proposed Rules:
92.....14968
318.....15946

10 CFR

2.....14925, 15372
30.....14051
40.....14051
50.....13361, 15372
51.....15372

52.....15372
70.....14051
170.....15372
Proposed Rules:
35.....13892
71.....13528

12 CFR

226.....13455, 13855
229.....13837, 13839, 13841
303.....14064
346.....14064
563.....15400
Proposed Rules:
304.....13693
522.....14085
523.....15951
545.....14091
563.....15426

13 CFR

108.....15919
Proposed Rules:
120.....15952

14 CFR

39.....13874, 13875, 14206, 14207, 14639–14644, 15739–15747, 16098
61.....15144, 15148
63.....15072, 15148
65.....15148
67.....15144
71.....13516, 13455, 13876, 14070, 14208–14212, 15748 16101–16103
73.....13517, 13877, 14212, 14213
91.....13810
97.....14070, 16104
121.....15134
1204.....14955
1206.....13518
Proposed Rules:
Ch. I.....14098
39.....13893, 13895, 1424, 14657–14660, 15766–15772 16127
71.....13529, 13896, 14098, 14414, 14661, 15774–15778, 15953
75.....14414
121.....15134

16 CFR

1.....14072
13.....14337
306.....14072
Proposed Rules:
13.....13529, 13533, 13695
436.....14662

17 CFR

4.....15748
211.....14073
Proposed Rules:
240.....15226, 15429
250.....15954
259.....15954

18 CFR

37.....15920
154.....13670
157.....13670
260.....13670
284.....13670
385.....13670
388.....13670

19 CFR

4.....15171
101.....15630
122.....14213
178.....15402
192.....15402
201.....13672, 13677
353.....13977, 14909
Proposed Rules:
111.....14824
162.....14242
171.....14242, 16195
175.....15440
177.....13978

20 CFR

217.....13362
639.....15404, 16042

21 CFR

5.....14796
58.....15923
175.....15749
176.....13880, 14074
177.....15750
178.....13877, 14734
444.....13878
520.....14340, 15751
546.....13977
573.....14214, 15874
872.....13828
878.....13826
892.....13828
1308.....14797, 14799
Proposed Rules:
109.....16128
130.....15441
163.....14663
176.....13606
182.....15441
184.....15441
291.....13897
347.....13490
348.....13490
358.....13480
509.....16128
864.....13698
872.....13833
892.....13833
1301.....16130
1305.....16130
1316.....14246

22 CFR

34.....13364
192.....16195

23 CFR

646.....13369

24 CFR

201.....14075
203.....14075
234.....14075
576.....13978

25 CFR

61.....14192
Proposed Rule:
101.....14361
103.....14361

26 CFR

1.....13606, 13679, 13978
35a.....14341
301.....13606
602.....13606
Proposed Rule:
1.....14825
31.....14363
601.....15779

27 CFR

47.....13680

28 CFR

0.....15752
2.....15172
Proposed Rules:
2.....15226
31.....14768

29 CFR

103.....16336
500.....13807
1601.....13519
1926.....15405
2610.....13520, 14955
2622.....13520
2676.....14956
Proposed Rules:
1926.....16131

30 CFR

206.....16105
701.....13814
740.....13814
750.....13814
773.....13814
774.....13814
800.....13814
843.....13814
935.....15173
Proposed Rule:
218.....14364
920.....14367, 16133
943.....15227
948.....16136
950.....15955

31 CFR

316.....15924
342.....15924
351.....15924
515.....13881, 14215
565.....13882

32 CFR

80.....13369
169.....13373
191.....15752
372.....13376
384.....13379
392.....13381, 15173
706.....13681
806b.....13521, 14957
Proposed Rules:
169a.....15442
1656.....14968

33 CFR

100.....13382, 14646, 14647 16106
117.....14647, 15753, 16106
160.....14077
161.....15173
165.....13883, 14076, 14957, 15179, 15753, 16107
Proposed Rule:
1.....14250
100.....14099, 14100, 14663, 14664, 15780
165.....13389, 14826
167.....14827

34 CFR

307.....15308
608.....14041
690.....14788
Proposed Rules:
345.....14778
425.....14740
426.....14740
432.....14740
433.....14740
434.....14740
435.....14740
436.....14740
437.....14740
438.....14740
441.....14740

36 CFR

217.....13807
251.....13807
Proposed Rules:

37 CFR

201.....14217
Proposed Rules:
2.....13605

38 CFR

17.....14648
21.....13521, 13702
36.....13703
Proposed Rules:
3.....15781

39 CFR

111.....15406
601.....15931
966.....15754
3001.....13703
Proposed Rules:
111.....15956

40 CFR

35.....14354
52.....13383, 13522, 13682, 13685, 14221–14226, 14648, 14650, 15180, 15181, 15932–15934
58.....15182
60.....13384
81.....14958, 15183
82.....13502
86.....14426
130.....14354
141.....15185
142.....15185
180.....13687, 13688, 15756
186.....15874
228.....15590
261.....15935, 15938
271.....14079, 15940
471.....13606
704.....14324
763.....15623
799.....13470, 13472

Proposed Rules:
52.....13389, 14969, 15227, 15956
82.....15228
141.....15228
142.....15228
261.....14101, 14971, 15316
300.....13898
372.....16138
503.....14736

41 CFR

51-7.....15188
Ch. 101.....14652
101-7.....16194
101-20.....15757
101-39.....15757
101-41.....15940-15943

42 CFR

62.....13458

Proposed Rules:
110.....13606, 14976

43 CFR

423.....14228
3200.....13884

Public Land Orders:
604 (Revoked in part by PLO 6722.....14802
1867 (Modified in part by PLO 6723.....14802
6702.....14734
6714.....13523
6715.....13524
6716.....13524
6717.....14800
6718.....14801
6719.....14801
6720.....14801
6721.....14802
6722.....14802
6723.....14802

44 CFR

65.....15408
67.....14803, 15409
207.....16108

Proposed Rules:
67.....14108, 15469

45 CFR

235.....15944
302.....15757
303.....15757
305.....15757
1611.....15945

Proposed Rules:
205.....15638
224.....15638
233.....15638
234.....15638
238.....15638
239.....15638
240.....15638
250.....15638
251.....15902
255.....15638
256.....15638
301.....15876
302.....15876
303.....15876
304.....15876
306.....15876
307.....15876

46 CFR

25.....14811
298.....14812

Proposed Rules:
30.....16198
31.....16198
33.....16198
35.....16198
70.....16198
71.....16198
75.....16198
78.....16198
90.....16198
91.....16198
94.....16198
97.....16198
107.....16198
108.....16198
109.....16198
112.....16198
154.....16198
160.....16198
161.....16198
167.....16198
168.....16198
188.....16198
189.....16198
192.....16198
196.....16198
199.....16198

47 CFR

0.....15193
19.....15193
36.....16110
73.....13525, 13689, 14232-14234, 14960, 14961, 15195, 15196

Proposed Rules:
73.....13533-13536, 14252, 14368, 15231, 15232, 15957
76.....14253
90.....14109
97.....13390

48 CFR

52.....16194
203.....16111
204.....16111
208.....14234, 14654, 16111
213.....16111
215.....16111
225.....16111
228.....16111
247.....16111
252.....14654, 16111
501.....13887
532.....14234
552.....14234
553.....14234
Ch. 51.....15410
5119.....15410
701.....16122
704.....16122
709.....16122
725.....16122
728.....16122
752.....16122

Proposed Rules:
3.....13391
36.....15132
46.....16094
5108.....15474
5145.....15471, 15472
5152.....15472, 15474

49 CFR

173.....14813
199.....14922
501.....14814
580.....15197-15205

Proposed Rules:
350.....13391, 15232
383.....15232
385.....15232
387.....15232
390.....13391
391.....15232
394.....15232
395.....15232
396.....15232
397.....15232
398.....15232
571.....14109, 15782
572.....13901
1135.....14369

50 CFR

17.....14964, 15206
20.....14814
23.....13387
80.....15208
204.....13889, 14239, 16123
216.....13889
642.....13689, 14360
650.....16123
658.....16123
672.....15411, 16126

Proposed Rules:
17.....14976, 15236
611.....13704, 14256, 15302
642.....14256
650.....15958
675.....14256, 153029

LIST OF PUBLIC LAWS

Last List April 18, 1989

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H.R. 1750/Pub. L. 101-14

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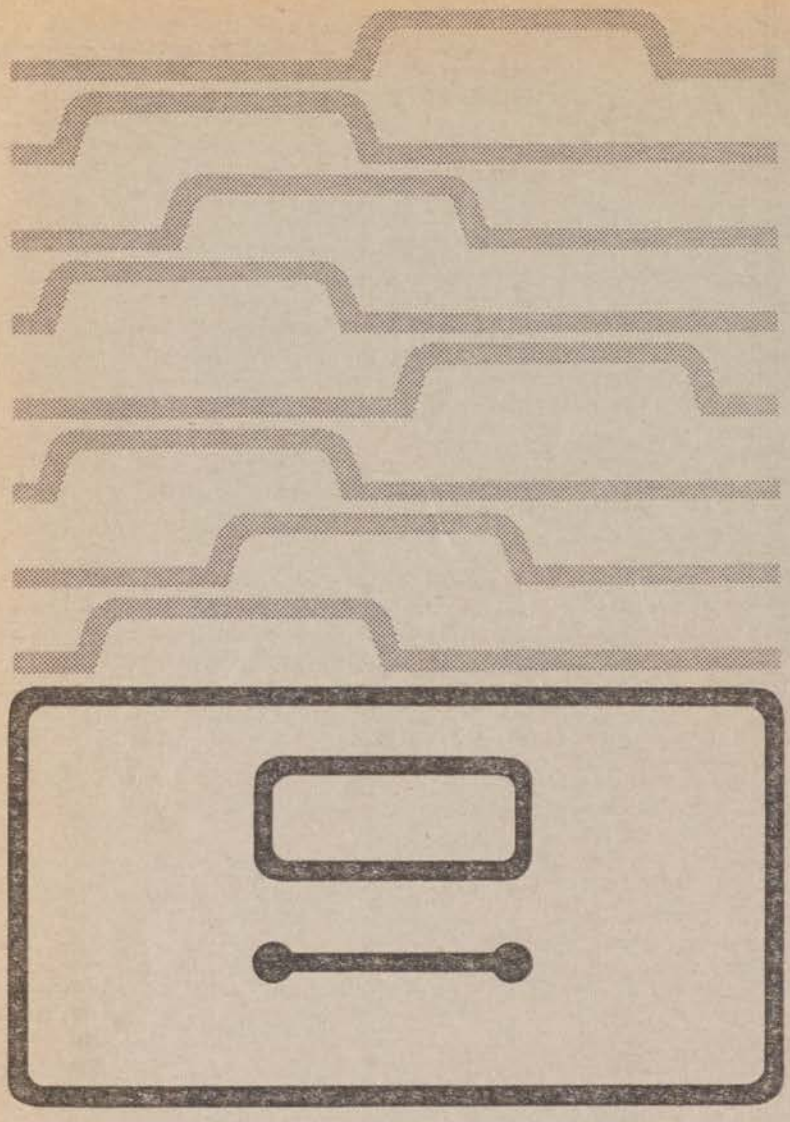
H.J. Res. 173/Pub. L. 101-15

To designate April 16, 1989, and April 6, 1990, as "Education Day, U.S.A." (Apr. 18, 1989; 103 Stat. 41; 2 pages) Price: $1.00



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in the Code of Federal Regulations (CFR)

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