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# federal register

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# Rules and Regulations

Federal Register

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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

### Commodity Credit Corporation

#### 7 CFR parts 1434 and 1435

#### Price Support and Production Adjustment Programs

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The regulations at 7 CFR parts 1434 and 1435 set forth the terms and conditions of the Commodity Credit Corporation (CCC) price support loan programs for honey and sugar, respectively. The interim rule, made final by this document, amended these provisions to provide greater clarity, enhance the administration of CCC programs, and eliminate obsolete provisions.

**EFFECTIVE DATE:** July 18, 1990.

**ADDRESSES:** Director, Cotton, Grain and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** David Wolf, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447-4704.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major". It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects

on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

The reporting and record keeping requirements of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

In order to more effectively administer its commodity price support programs, over the past year CCC has reviewed various program regulations and program contracts in order to develop more uniform program provisions. Accordingly, the interim rule amended the honey price support program regulations at 7 CFR part 1434 to delete obsolete provisions and make changes to conform to the CCC price support loan agreement. The interim rule also amended the sugar price support program regulations at 7 CFR part 1435 in order to make similar changes and to make revisions for clarity.

No comments were received during the comment period which ended on November 13, 1989.

## List of Subjects

### 7 CFR Part 1434

Honey, Loan programs-agriculture, Price support programs.

### 7 CFR Part 1435

Sugar, Loan programs-agriculture, Price support programs.

Accordingly, the interim rule published at 54 FR 41588 on October 11, 1989 which amended 7 CFR parts 1434 and 1435 is hereby adopted as a final rule without change.

Signed this 10th day of July 1990 at Washington, DC

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-16703 Filed 7-17-90; 8:45 am]

BILLING CODE 3410-05-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50, 72, and 170

RIN 3150-AC76

#### Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to provide for the storage of spent nuclear fuel under a general license on the site of any nuclear power reactor provided the reactor licensee notifies the NRC, only NRC-certified casks are used for storage, and the spent fuel is stored under conditions specified in the cask's certificate of compliance. This final rule also provides procedures and criteria for obtaining NRC approval of spent fuel storage cask designs.

**EFFECTIVE DATE:** August 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** John L. Telford, Office of Nuclear Regulatory Research (Telephone: (301) 492-3796) or John P. Roberts (Telephone: (301) 492-0608), Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:****Background**

The Commission published the proposed rule on this subject in the *Federal Register* on May 5, 1989 (54 FR 19379). The rule proposed to amend 10 CFR part 72 to provide for storage of spent fuel on the sites of nuclear power reactors without the need for additional site-specific Commission approvals, as directed by the Nuclear Waste Policy Act of 1982 (NWPA). Section 218(a) of the NWPA directed the Department of Energy to establish a spent fuel storage development program with the objective of establishing one or more technologies that the NRC might approve for use at civilian nuclear power reactor sites without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Section 133 of the NWPA directs the Commission to establish, by rule, procedures for licensing any technology approved under Section 218(a). The approved technology is storage of spent fuel in dry casks. The final rule is not significantly different from the proposed rule. In order to utilize an NRC certified cask under a general license, power reactor licensees must (1) perform written evaluations showing that there is no unreviewed safety question or change in reactor technical specifications related to the spent fuel storage, and that spent fuel will be stored in compliance with the cask's Certificate of Compliance; (2) provide adequate safeguards; (3) notify NRC prior to first storage of spent fuel and whenever a new cask is added to storage; and (4) maintain the records specified in the rule.

**Public Responses**

The comment period expired on June 19, 1989, but all of the comments received were considered in this final rulemaking. The NRC received 273 comment letters from individuals, environmental groups, utilities, utility representatives, engineering groups, States, and a Federal agency. Among the comment letters were 237 from individuals, including several signed by more than one person. Many commenters discussed topics that were not the subject of this rulemaking, e.g., that the generation of radioactive wastes should be stopped and that environmentally safe alternative sources of power should be developed.

The Western Governors' Association recently passed a resolution expressing their position on the storage of spent commercial power reactor fuel. In this resolution the governors endorsed at-reactor dry storage of spent fuel as an interim solution until a permanent

repository is available. This resolution was forwarded to NRC Chairman Kenneth M. Carr in a memorandum dated December 5, 1989.

Included in the comments received was a "petition" addressed to the Commission, which was signed by 183 people, who are opposed to the proposed rule and who specifically oppose:

1. Storage at the Pilgrim nuclear power plant of spent fuel generated at other reactors,
2. Storage of spent fuel in casks outside the reactor building,
3. Storage of spent fuel without the need for specific approval of the storage site, and
4. Storage of spent fuel without requiring any specific safeguards to prevent its theft.

Many of the letters contained comments that were similar in nature. These comments are grouped, as appropriate, and addressed as single issues. The NRC has identified and responded to 50 separate issues that include the significant points raised. Among the comments that discussed technology, the majority expressed a preference for spent fuel storage in dry casks over wet storage.

On August 19, 1988, the Commission promulgated a final rule revising 10 CFR part 72 (53 FR 31651), which became effective on September 19, 1988. Among the changes made in that final rule was a renumbering of the sections. These revised section numbers are the ones referenced in this rulemaking. Because many people interested in this rulemaking may not have a copy of the newly revised part 72, sections referenced in this Supplementary Information section are followed by a bracketed number that refers to the corresponding section number in the old rule (49 FR 74693; made effective on November 12, 1980).

**Analyses of Public Comments**

1. *Comments.* Elimination of public input from licensing of spent fuel storage at reactors under the general license was discussed in 237 letters of comment and 52 of the commenters were opposed to the rule for this reason. Many of these comments were opposed to the NRC allowing dry cask storage without going through the formal procedure currently required for a facility license amendment that requires public notification and opportunity for a hearing. One commenter stated that the proposed rule does not guarantee hearing rights mandated by the Atomic Energy Act, and, therefore, the proposed rule must be amended to provide for

site-specific hearing rights before it can be lawfully adopted. Another commenter stated that, by proposing to issue a general license before determining whether license modifications are required in order to allow the actual storage of spent fuel onsite, the NRC apparently intends to circumvent the requirement for public hearings on individual applications for permission to use dry cask storage. This comment continued that this approach would violate the statutory scheme for licensing nuclear power plants, in which the NRC must approve all proposed license conditions before the license is issued. This comment further stated that the NRC cannot lawfully issue a general license for actual onsite storage of the waste without also obtaining and reviewing the site-specific information that would allow it to find that the proposed modification to each plant's design and operation are in conformance with the Atomic Energy Act (the Act) and the regulations.

*Response.* This rule does not violate any hearing rights granted by the Act. Under 10 CFR parts 2, 50, and 72, interested persons have a right to request a formal hearing or proceeding for the granting of a license for a power reactor or the granting of a specific license to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS). However, hearing processes do not apply when issues are resolved generically by rulemaking. Under this rule, casks will be approved by rulemaking and any safety issues that are connected with the casks are properly addressed in that rulemaking rather than in a hearing procedure.

There is a possibility that the use of a certified cask at a particular site may entail the need for site-specific licensing action. For example, an evaluation under 10 CFR 50.59 for a new cask loading procedure could require a part 50 license amendment in a particular case. In this event the usual formal hearing requirements would apply. However, generic cask approval (issuance of a certificate of compliance) would, in accordance with section 133 of the Nuclear Waste Policy Act of 1982 (NWPA), eliminate the need for site-specific approvals to the maximum extent practicable.

Under the rule, actual use of an NRC certified cask will require reviews by individual facility licensees to show, among other things, that conditions of the certificate of compliance for the cask will be met. These reviews and necessary follow-up actions by the

licensee are conditions for use of the cask. For example, licensees must review their reactor security plan to ensure that its effectiveness is not decreased by the use of the casks. But these requirements for license reviews do not constitute requirements for Commission approval prior to cask use; that is no Commission finding with respect to these reviews are needed prior to use of the casks. Therefore, no hearing rights will accrue to these reviews unless, of course, the reviews point to the need for an amendment of the facility license. The Commission is satisfied that public health and safety, the common defense and security, and protection of the environment is reasonably assured without the requirement for Commission approval of these license reviews because conservative requirements apply, such as a safety analysis of cask designs, including design bases, design criteria, and margins of safety; an evaluation of siting factors, including earthquake intensity and tornado missiles; an application of quality assurance, including control of cask design and cask fabrication; and physical protection. These conservative requirements and stringent controls assure safe cask storage for any reactor site.

2. *Comments.* The NRC apparently intends to exercise no systematic or mandatory review of applications to store fuel in dry casks, despite the numerous changes involved in the reactor's design and procedures. This commenter further stated that the rule should provide for mandatory submission and review by the NRC of technical documents required in § 72.212 and that these documents should be placed in the public document rooms for inspection by the public.

*Response.* A condition of the general license is that a reactor licensee must determine whether activities related to storage of spent fuel at the reactor site involve any unreviewed safety question or require any change in technical specifications. This written determination becomes part of the reactor licensee's records. Under 10 CFR 50.59, an unreviewed safety question is involved if (1) the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the SAR may be increased; or (2) if a possibility for an accident or malfunction of a different type than any evaluated previously in the SAR may be created; or (3) if the margin of safety as defined in the basis for any technical specification is reduced. If the

evaluation made under 10 CFR 50.59 reveals any unreviewed safety question or if use of a cask design requires any change in technical specifications or a facility license amendment is needed for any reason, then casks of that design cannot be used to store spent fuel under the general license. The reactor licensee must apply for and obtain specific NRC approval of those changes to the facility license necessary to use the desired cask design, use a different cask design, or apply for a specific license under 10 CFR part 72. If the reactor licensee chooses to make changes to accommodate the desired cask design, e.g., revise technical specifications, an application for a license amendment would have to be submitted under 10 CFR 50.90.

3. *Comments.* It appears that a hearing would be mandated under the Act, as spent fuel storage under the general license would involve a license amendment. The commenter argued that nuclear power reactor licenses contain a clause stating that the facility has been constructed and will operate in accordance with the application and that the application will operate in accordance with the application and that the application includes the FSAR (10 CFR 50.34(b)). If the FSAR does not describe cask storage of spent fuel, then a facility using cask storage would not be operating in accordance with the application and the license, necessitating a license amendment.

*Response.* According to 10 CFR 50.34(b) each application for a license to operate a power reactor must include an FSAR. The FSAR must include information that describes the facility, presents the design bases and limits on its operation, and presents a safety analysis of the structures, systems, and components of the reactor. A power reactor is licensed to operate under the regulations in 10 CFR part 50. If spent fuel is stored in an ISFSI on a reactor site, this storage will be licensed under the regulations in 10 CFR part 72. The ISFSI may share utilities and services with the reactor for activities related to the storage of spent fuel, e.g., facilities for loading spent fuel storage casks. A power reactor FSAR will contain a description of cask loading and unloading, because reactor fuel (both fresh and spent) must be handled for operation of the reactor. If no amendment of the operating license is necessary (e.g., there is no problem in fuel handling concerning heavy loads and there is no unreviewed safety question), then spent fuel may be stored under the general license. The authority for storage of spent fuel in the certified

cask would be derived from the general license, not from the part 50 license.

4. *Comments.* The NRC should reconsider the indiscriminate storage on a reactor site of spent nuclear fuel that was generated at other reactor sites. One commenter stated that there should be a restriction to permit only transfer of spent fuel from plant to plant within a utility-owned group of plants. Another commenter stated that storage of spent fuel from two or more reactors inevitably makes the host site a de facto regional repository, without the same benefit of review and discussion given the regional site. Another commenter suggested that the amount of spent fuel stored on a site should be limited to that amount produced by the site's reactor operations. The major concern of these commenters appeared to be that spent fuel from a number of reactors would be deliberately accumulated and stored at one reactor site under this general license.

*Response.* This rulemaking is not concerned with transfer or shipment of spent fuel from one reactor site to another. As explained in the discussion of the proposed rule (54 FR 19379), transfer of spent fuel from one reactor site to another must be authorized by the receiving reactor's operating license. Such authorization usually will require a license amendment action conducted under the regulations in 10 CFR part 50. The transportation of the spent fuel is subject to the regulations in 10 CFR part 71. This rulemaking is not germane to either spent fuel transfer or transportation procedures. The NRC anticipates that, beginning in the early 1990s, there will be a significant need for additional spent fuel storage capacity at many nuclear power reactors. This was a major reason for initiating this rulemaking at this time. Dry storage of spent fuel in casks under a general license would alleviate the necessity of transferring spent fuel from one reactor site to another.

5. *Comment.* The Commission should reconsider a petition for rulemaking submitted by the State of Wisconsin. The petition requested that the NRC expand the scope of its regulations pertaining to spent fuel transport "to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route."

*Response.* As explained in the response to comment number 4, this rulemaking does not apply to transportation of spent fuel. Transportation of spent fuel is the subject of 10 CFR part 71, under which

the issues raised by this petition were considered. There is no reason to reconsider this petition in terms of the issues under consideration in this rulemaking.

6. *Comment.* How would the rulemaking process for cask approvals be implemented?

*Response.* The initial step would be taken by a cask vendor submitting an application for NRC approval of a cask design. The NRC would review the cask safety analysis report (SAR) and other relevant documents. If the cask design is approved, the NRC would initiate a rulemaking to amend 10 CFR 72.214 to add certification of the cask design. The NRC would also revise the NUREG containing the Certificates of Compliance for all approved storage casks to add the new cask's Certificate of Compliance.

7. *Comment.* The proposed 10 CFR 72.236(c) would establish a criterion that casks must be designed and fabricated so that subcriticality is maintained. This seems to suggest that the actual fabrication takes place before cask approval. Otherwise how could NRC find that the cask has been fabricated to maintain subcriticality?

*Response.* Findings by the NRC concerning safety of cask design are based on analyses presented in the cask SAR. In the case of criticality analyses, the SAR must include a description of the calculational methods and input values used to determine nuclear criticality, including margins of safety and benchmarks, justification and validation of calculational methods, fuel loading, enrichment of the unirradiated fuel, burnup, cooling time of the spent fuel prior to cask storage, and neutron cross-sectional values used in the analysis. Further, in order to obtain approval of a cask design, the vendor must demonstrate that casks will be designed and fabricated under a quality assurance program approved by the NRC. As an example, if neutron poison material were part of the cask design to prevent inadvertent criticality, the quality assurance program would have to ensure that the material was actually installed as designed. The NRC will not inspect fabrication of each cask, but will ensure that each cask is fabricated under an NRC-approved quality assurance program. Thus, there is reasonable assurance that the cask will be designed and fabricated to maintain spent fuel in a subcritical configuration in storage.

8. *Comment.* Each utility should be required to present a plan for inspecting the casks in the storage area.

*Response.* Surveillance requirements for spent fuel storage casks in the

storage area are required and are described in the cask's Certificate of Compliance. Also, periodic inspections for safety status and periodic radiation surveys are required by the certificate. Further, licensees will have to keep records showing the results of these inspections and surveys.

9. *Comments.* The 20-year limit on approval of cask designs seems unduly restrictive and was not supported by any discussion of safety or environmental issues in the preamble of the proposed rule. One comment stated that unless there are overriding institutional issues or a defect in a cask model, which would preclude providing adequate protection of the environment or public health and safety, there would be no need to revoke or modify a Certificate of Compliance. Three commenters suggested that the criteria for cask design reapproval should be limited to safety and environmental issues related to the storage period, because there may have been proprietary information involved in the initial approval that might not be available for reapproval. Another commenter stated that the licensing period for spent fuel storage casks should be extended to be at least equal to the operating license of the reactor. Another commenter stated that because a 100-year period is being considered by the Commission in its waste confidence review, an extension should be considered for a cask certification period.

*Response.* The procedure for reapproval of cask designs was not intended to repeat all of the analyses required for the original approval. However, the Commission believes that the staff should review spent fuel storage cask designs periodically to consider any new information, either generic to spent fuel storage or specific to cask designs, that may have arisen since issuance of the cask's Certificate of Compliance. A 20-year reapproval period for cask designs was chosen because it corresponds to the 20-year license renewal period currently under part 72.

10. *Comment.* It is conceivable that, after 20 years of storage, the regulations could force the transfer of spent fuel at the reactor to a new cask or a different cask design only because it better conforms to DOE's preference. If considerations such as safety risks and occupational exposure from spent fuel transfer are not a significant factor, this potential uncertainty should be removed from the rule.

*Response.* The Department of Energy (DOE) will be the ultimate receiver of spent fuel. If a cask design were not

compatible with DOE's criteria for receipt of spent fuel, then measures would need to be taken so that spent fuel could be transferred offsite. What these measures might be would depend on the cask design and DOE's criteria.

11. *Comment.* The practice of permitting each vendor to not seek reapproval of the cask design after a 20-year period seems "fragile and irresponsible."

*Response.* This comment is interpreted to mean that the Commission should require each cask vendor to submit an application for reapproval of their cask design. The Commission's authority over corporate entities is limited to licensing matters and it cannot control the economic status of spent fuel storage cask manufacturers. The NRC cannot require that a cask vendor submit an application for renewal of a storage cask design if the vendor is no longer in business. A cask vendor who remains in the business of manufacturing spent fuel storage casks is required to submit an application for renewal of a cask design. Otherwise the cask's Certificate of Compliance would expire and that cask design could not be used to store spent fuel. Licensees cannot use any cask that does not have a valid Certificate of Compliance. If a cask vendor goes out of the business of supplying spent fuel storage casks, it would not invalidate NRC approval of the spent fuel storage casks that were manufactured by this vendor and remain in use. That is the reason the Commission will permit general licensees or their representatives to apply for cask design reapproval. Accordingly, the Commission will keep appropriate historical records and conduct inspections, as required, related to spent fuel storage in casks. Cask vendors are requested to notify the Commission if they do not intend to submit an application for reapproval of a cask design. Also, vendors are required under 10 CFR 72.234 to submit their composite record to the NRC of casks manufactured and sold or leased to reactor licensees if they permanently cease manufacture of casks under a Certificate of Compliance. In any case, the cask design renewal procedure will be coordinated through historical records, inspections, and communications with cask vendors.

12. *Comments.* The requirements in proposed § 72.234(c) that cask fabrication cannot start prior to receipt of the Certificate of Compliance is unnecessarily restrictive. The commenter indicated that a vendor should have the option of being able to

start fabrication (taking the risk of building a cask that may not ever be licensed) prior to NRC issuing the Certificate of Compliance.

*Response.* Section 72.234(c) is not intended to prevent vendors from taking a risk. The Certificate of Compliance provides the specific criteria for cask design and fabrication. If a vendor has not received the certificate, then the vendor does not have the necessary approved specifications and may design and fabricate casks to meet incorrect criteria.

13. *Comments.* Requiring a submittal for reapproval of cask design 3 years before the expiration date of a Certificate of Compliance seems excessive. Another commenter suggested that a procedure similar to that used for renewal of materials-type licenses could be used, which is that when a licensee submits an application for license renewal in proper form not less than 30 days prior to the expiration date of the license that the existing license does not expire until the application for renewal has been finally determined by the Commission.

*Response.* Current regulations in 10 CFR part 72 requires that applications for license renewal be submitted 2 years prior to the expiration date of the license. This was a major consideration for setting the date for submittal of a cask design reapproval application in the proposed rule. The NRC has reconsidered this requirement and believes that the period required for cask design reapproval can be reduced. The final rule has been revised to incorporate language similar to that for other materials-type license renewals, which would allow a Certificate of Compliance to continue in effect until the application for reapproval has been finally determined by the Commission.

14. *Comments.* No spent fuel dry storage should be allowed at sites that do not have fully operational State approved emergency preparedness plans. Another commenter stated that, for emergency response purposes and for proper inclusion in emergency planning, the utility must notify State and local governments simultaneously with the NRC when spent fuel storage is begun. Another commenter inquired whether or not States would be notified of spent fuel storage at the reactor site in order to minimize emergency response planning impacts.

*Response.* The new 10 CFR 72.32(c) [no section in the old rule is applicable] states that "For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be

deemed to satisfy the requirements of this section." One condition of the general license is that the reactor licensee must review the reactor emergency plan and modify it as necessary to cover dry cask storage and related activities. If the emergency plan is in compliance with 10 CFR 50.47, then it is in compliance with the Commission's regulations with respect to dry cask storage. Thus, the utility does not need to separately notify State and local governments before beginning spent fuel storage.

15. *Comment.* What extra information, beyond that currently required in safety analysis reports, will be required in topical safety analysis reports for cask certification?

*Response.* Currently a Topical Safety Analysis Report (TSAR) is submitted to obtain spent fuel storage cask certification. NRC procedures allow applicants and licensees to reference appropriate Sections of a TSAR in licensing proceedings, which reduces investigative and evaluation costs for them. Under this final rule, applications and a Safety Analysis Report (SAR) (equivalent to a TSAR) will have to be submitted to cask design certification. There will not be any "extra" information required in an SAR as a result of this rulemaking. Guidance on the information to be submitted in an SAR for cask design certification is contained in Regulatory Guide 3.61, "Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask."

16. *Comment.* One comment stated that it is unclear from the proposed rule as to whether full-scale or scale model testing is required for cask certification.

*Response.* The safety of cask designs is analyzed in the SAR. The staff reviews cask design bases and criteria. The design and performance of the cask and the means of controlling and limiting occupational radiation exposures are analyzed. Appropriate functional and operating limits (technical specifications) are developed. However, in instances where cask design, construction, or operation can not be satisfactorily substantiated, the staff may require that some component or system testing be performed. During the first use of a certified design the licensee, in conjunction with the vendor, may be required to conduct preoperational testing on the first cask and submit a report to the NRC. This preoperational testing would assess the extent to which data supports the critical aspects of design, for example, the resultant cask temperature, pressure, and external radiation. Full-scale testing is not currently required for spent fuel

dry storage cask design certification. However, testing of systems and components important to safety is required, and is specified in the Certificate of Compliance.

17. *Comment.* Can the NRC provide examples of acceptable means of demonstrating that a cask will reasonably maintain confinement of radioactive material under normal, off-normal, and accident conditions?

*Response.* Certification of a cask design is based on analyses described in each cask's SAR. These analyses must show how radioactive materials will be confined through evaluations of the cask's systems, structures, and components, and the designed markings of safety. These analyses are performed on an individual case basis considering each cask's design, materials of construction, cask sealing systems, fuel basket criticality considerations, and gamma and neutron shielding mechanisms. Thus, analyses are the acceptable means of demonstration.

18. *Comment.* The NRC should use this amendment to provide guidance or criteria on use of burnup credit in criticality analyses.

*Response.* Evaluations of burnup credit are dependent on parameters such as fuel design, exposure, and characteristics. These evaluations are best conducted on an individual case basis, because the variables that must be evaluated are closely related to the individual case history of the spent fuel. Thus, guidance on such evaluations would be more appropriately set forth in regulatory guides, rather than in regulations. To date allowance for burnup credit has not been accepted in reviews conducted under 10 CFR part 72, however, regulatory guides may be issued in the future.

19. *Comment.* What will a current reactor licensee have to do to obtain a general license?

*Response.* As specified in § 72.212(b), a power reactor licensee must (1) perform written evaluations establishing that spent fuel storage will be in compliance with a cask's Certificate of Compliance and that there is no unreviewed safety question or change in technical specifications involved in activities at the reactor related to the storage of spent fuel in casks, (2) provide adequate safeguards for the spent fuel in storage, (3) notify NRC prior to first-storage of spent fuel and whenever a new cask is used, and (4) keep records of spent fuel storage and related activities.

20. *Comment.* Could the general license be used to store spent fuel beyond the term of the reactor operating

license? Several utilities hold operating licenses at more than one site; thus, clarification is needed as to when an operating license is terminated and how licensees may use a general license.

*Response.* A licensee who holds reactor operating licenses at more than one site must notify NRC for each site involved. A licensee who holds operating licenses for more than one reactor located on a single site need notify NRC only once.

Spent fuel can be stored on a site only as long as there is a power reactor with a valid license or the possession of spent fuel is authorized under some other regulation or form of license. This could be an amended license issued under 10 CFR 50.82, under which any reactor licensee may apply for termination of the operating license and to decommission the facility. When the reactor is put into a condition in which it cannot operate, the operating license would be amended to permit the licensee to possess the byproduct, source, and special nuclear material remaining on the site. Storage of spent fuel in dry casks under the general license could continue under the amended license, which is often called a "possession-only" license.

Decommissioning means to remove a facility from service, reduce the residual radioactivity to a level that permits termination of the license, and release of the site for unrestricted use. Spent fuel stored under a general license must be removed before the site can be released for unrestricted use (i.e., decommissioned).

*21. Comment.* The proposed rule is unclear as to when the general license would terminate if a cask model has been reapproved by NRC following use of the cask for a period of up to 20 years. One commenter also suggested that § 72.212(a)(2) be changed to read: "The general license for the storage of spent fuel in each cask fabricated under a Certificate of Compliance shall terminate either 20 years after the date that the cask is first used by the licensee to store spent fuel, or, if the cask model is reapproved for storage of fuel for more than 20 years, at the conclusion of this newly-approved storage period, beginning on the date that the cask is first used by the licensee to store spent fuel."

*Response.* The intent of proposed § 72.212(a)(2) is that spent fuel may be stored under a valid Certificate of Compliance for a particular cask for a period of up to 20 years starting on the date the cask is first used for storage of spent fuel by the licensee. If a cask design is reapproved, the 20-year storage period begins anew, including

casks of that design that remain in use. The 20-year storage period will also apply to new casks put into use after a Certificate of Compliance is reapproved. If a particular cask's Certificate of Compliance expires, the spent fuel stored in casks of this design must be removed after a period not exceeding 20 years following first use by the general licensee of a particular cask. Revisions have been made to 10 CFR 72.212(a)(2) to more accurately reflect this intent.

*22. Comment.* The \$150 application fee shown in § 70.31 should be included in the total fee for the license and not required to be submitted at the time of the application.

*Response.* The Federal Register notice for the proposed rule was in error in that it indicated a revision to § 70.31; the revision is actually being made to § 170.31. The Commission agrees that the \$150 filing fee is not required to be submitted at the time of the application. The necessary changes to eliminate the filing fee have been made in § 170.31. This is consistent with a similar change made with respect to filing fees in § 170.21 effective January 30, 1989. There is no application fee for the general license. However, the Commission has decided that it will assess fees for those inspections conducted under the general license (§ 72.212(b)(1)(iii)).

*23. Comment.* Cask vendors, some of which are small businesses, will be affected by the rule and should be considered in the Regulatory Flexibility Act Certification statement.

*Response.* Under this rulemaking the NRC will recover full costs, which are currently estimated to be between \$250,000 and \$300,000 for cask vendors. No other significant incremental impacts are anticipated, because the criteria for cask design approvals in this final rule are not significantly different from those currently required under part 72. The Regulatory Flexibility Act Certification Section of the final rule has been revised accordingly.

*24. Comment.* Some qualification is needed for the requirement in § 72.212(b)(2) that a licensee perform written evaluations showing compliance with the cask's certificate for the anticipated total number of casks to be used for storage. There is no certainty regarding when any spent fuel will be accepted by DOE, and this uncertainty should be clarified in the final rule.

*Response.* Each cask SAR includes an analysis of cask arrays, and licensees must consider these analyses in their selection of a cask model. Multiple storage arrays may be used if additional spent fuel storage capacity is needed. However, it was not intended that licensees be required to anticipate how

much storage capacity would be needed before DOE begins accepting spent fuel for storage or disposal. Thus, revisions to § 72.212(b)(2) have been made to clarify the intent.

*25. Comment.* Spent fuel should be required to be stored in the reactor fuel storage pool for a minimum of 5 years prior to dry cask storage. Such a provision would place considerably less thermal stress on the storage casks. Other commenters also questioned why this was not made a requirement.

*Response.* It is likely that the spent fuel will be stored in the reactor fuel pool for at least 5 years before storage in a cask. However, it is not necessary to make this a requirement, because casks can be designed to safely store spent fuel having a wide range of previous pool storage times.

*26. Comments.* The language in proposed 10 CFR 72.230 should be changed to reflect the condition that an application for certification of a storage cask must be made available to the public.

*Response.* The language of this section parallels the language in § 72.20 [§ 72.13] on which it is based, i.e., that "Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in parts 2 and 9 of this chapter." In general, applications will be made available except to the extent that they contain information exempt from disclosure such as proprietary or classified information.

*27. Comments.* The proposed rule should be modified to include alternative storage technologies. Two commenters indicated that the proposed rule approval of only one storage technology (i.e., spent fuel storage in dry casks) provides an unfair competitive advantage to suppliers of these systems.

*Response.* The reasons for Commission approval of spent fuel storage in dry casks are discussed in the Federal Register notice for the proposed rule. An important consideration is that free-standing casks, being very strong and massive structures, are independent of the effects of site-specific natural phenomena. For instance, in a worst case scenario considering the effects of earthquakes, a cask could topple. Forces from this fall would be well within a cask's design limits for safe confinement of radioactivity. Importantly, site-specific approvals would not be required by the Commission, provided conditions in subpart K are met. One system specifically mentioned in the comments is NUHOMS (registered trade

mark by NUTECH Inc.), which consists of storing spent fuel in sealed canisters and storing the canisters in concrete modules. Another system mentioned is the Modular Vault Dry Store (FW Energy Applications, Inc.), which consists of storing the spent fuel in sealed containers and storing the containers in racks set in concrete or earth for shielding. A major reason that these spent fuel storage systems, which are being considered by the Commission for use under a general license, are not being approved at this time is that they have components that are dependent on site-specific parameters and; thus, require site-specific approvals. For instance the concrete storage modules used in the NUHOMS system and the racks and concrete shielding required by the Modular Vault Dry Store system, which are structures and systems important to safety, are usually constructed in-place and require site-specific evaluations of earthquake intensity and soil characteristics.

28. *Comment.* Paragraph 5 and 6 of "Discussion" in the proposed rule Federal Register notice did not include NUHOMS topical safety analysis reports (TSAR), although they have been approved by the staff.

*Response.* Two topical safety analysis reports for NUHOMS systems have been reviewed and approved by the NRC staff. Approval of a TSAR allows an applicant for a specific license under Part 72 to reference the document, instead of having to develop separate safety evaluations.

29. *Comments.* A licensee should be required to register use of casks prior to actual use of the cask, rather than within 30 days. Another commenter stated that the Commission has not demonstrated that the requirement to report initial storage of spent fuel in a cask within 30 days is the least burdensome necessary to achieve the Commission's objective. This commenter suggested that this information could be reported at the annual inventory.

*Response.* The purpose of the registration notice in § 72.212(b)(1)(ii) is to enable NRC's Office of Nuclear Material Safety and Safeguards to establish and maintain a record of the use of each cask. If safety issues arise during storage of spent fuel under the general license, they will be reported under § 72.216. The purpose of the records related to spent fuel inventory, required under § 72.72 [§ 72.51], is to enable NRC's Office of Nuclear Reactor Regulation to inspect for compliance with safeguards regulations. The information submitted under § 72.212(b)(1)(ii) is necessary to enable

the NRC to take appropriate action in a timely manner on any issue that may arise.

30. *Comments.* The proposed rule requires that spent fuel storage cask designers give consideration to compatibility of cask designs with transportation and ultimate disposal by DOE. Some commenters favored this consideration and others questioned its advisability, unless specific criteria could be provided. Some commenters indicated that NRC should also address the lack of consistency between parts 71 and 72.

*Response.* Specific design criteria for spent fuel disposal may not be available until a repository design is approved. However, cask designers should remain aware that spent fuel ultimately will be received by DOE and that cask designs should adopt DOE criteria as they become available. This does not mean that cask designs previously certified by NRC will have to be recertified for this reason in order to continue to store spent fuel.

It is not necessary that storage casks be designed for transport of spent fuel (i.e., to meet requirements in part 71), because the spent fuel could be unloaded and transferred into transport casks approved under part 71, if necessary. However, in the interest of reducing radiation exposure, storage casks should be designed to be compatible with transportation and DOE design criteria to the extent practicable. Transportation compatibility will be attainable to the extent that cask designers can avoid return of spent fuel from dry storage to reactor basins for transfers to a transport cask before moving it off-site for disposal.

31. *Comment.* Section 72.238 should be revised to read "The criteria in § 72.236 (a) through (i) and (m)."

*Response.* Section 72.236(m) states that, to the extent practicable in the design of casks, consideration should be given to the compatibility of the dry storage cask system and components with transportation and other activities related to the removal of the stored spent fuel from the reactor site for ultimate disposition by DOE. DOE is developing repository storage designs that will be acceptable for use at their permanent spent fuel storage facility. However, specific criteria for designing spent fuel storage casks for compatibility may not be available until the design for a high-level waste repository is complete. Revision of § 72.238 is not considered to be appropriate at this time, although requirements in proposed § 72.236(m) have been retained separately.

32. *Comment.* The environmental assessment fails to conform to the requirements of the National Environmental Protection Act of 1969 (NEPA) and the guidelines of the Council on Environmental Quality (CEQ).

*Response.* The Commission's regulations for implementing section 102(2) of NEPA in a manner consistent with NRC's domestic licensing and related regulatory authority under the Atomic Energy Act are set forth in 10 CFR part 51. These regulations were revised in March of 1984 (49 FR 9352), taking into account the guidelines of CEQ. The environmental assessment for this rule was performed in conformity with the agency's environmental review procedures in 10 CFR part 51 and thereby conforms to NEPA requirements.

33. *Comment.* While the public notice provides a list of documents which contain current information, a supplemental environmental impact statement is required in order to inform the public as to the nature of the information and to allow an opportunity for public comment.

*Response.* Potential environmental impacts related to this rulemaking were analyzed in its environmental assessment, in previous rulemakings related to revision of part 72, and in the Commission's waste confidence proceedings that resulted in publication of the Waste Confidence Decision in the Federal Register on August 31, 1984 (49 FR 34658). In its waste confidence proceedings the Commission found that it has reasonable assurance that no significant environmental impacts will result from the storage of spent fuel for at least 30 years beyond the expiration of nuclear power reactor operating licenses. As a result of its Waste Confidence Decision, the Commission revised its regulations in 10 CFR 51.23 to eliminate discussion of the environmental impact of spent fuel storage in reactor storage pools or independent spent fuel storage installations for the period following the term of the license. In addition, the Commission recently published a review of its waste confidence decision (54 FR 39765; September 27, 1989). Accordingly, an environmental assessment, rather than an environmental impact statement, is considered suitable for this rulemaking. Also all of these documents were published in the Federal Register to allow an opportunity for public comment.

34. *Comment.* The NRC has misrepresented the requirements of the NWPA. The environmental assessment

and finding of no significant environmental impact states that the NWSA directs the Commission to approve one or more technologies for use of spent fuel storage. While the demonstration program is mandated, the adoption of one or more technologies is not.

*Response.* Section 218(a) of the NWSA does not direct the Commission to approve any spent fuel storage technology. However, the objective of the demonstration program is clearly meant to provide the basis for Commission approval of one or more technologies for use at civilian nuclear power reactor sites. Section 133 of the NWSA directs that the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a). Thus, the NRC has properly represented the directives of the NWSA. The environmental assessment explains this relationship in the section entitled "The Need for the Proposed Action."

35. *Comments.* The NRC failed to discuss the consequences of a failure of its assumptions. The NRC states that the potential for corrosion of fuel cladding and reaction with the fuel is reduced "because an inert atmosphere is expected to be maintained" inside the casks. Further, the NRC "anticipates that most spent fuel stored in the casks will be 5 years old or more." What are the consequences if the scenarios the NRC "anticipates" does not happen?

*Response.* The potential consequences from off-normal and accident conditions involving spent fuel storage were discussed in the proposed rule. Licensees are required to store spent fuel under the general license, in accordance with the regulations in 10 CFR part 72 and the cask's Certificate of Compliance. Part 72 prohibits the storage of spent fuel that is less than 1 year old. The Certificate of Compliance requires that the spent fuel be stored in accordance with the technical specifications developed in the safety analysis report. These specifications set forth the age, number of fuel assemblies, maximum initial enrichment, maximum burnup, and maximum heat generation rate of the spent fuel. In general terms, the longer the spent fuel is aged, the greater the capacity of the cask. Cask atmospheres will be required to be filled with an inert gas and provided with monitoring systems to detect leaks in the cask sealing system. If the redundant seals and the monitoring system fail, oxidation of the fuel cladding could occur if the inert gas leaked out, atmospheric air leaked in, and the

internal cask temperature increased markedly. But, there would not be any significant increase in radioactivity, because any release of radioactive particles from the fuel rods would remain confined within the cask. If the redundant seals fail and the monitoring system does not fail, the monitoring system would detect the failure and the seals would be promptly repaired. If removal of the spent fuel were required, unloading procedures call for checking the cask's atmosphere before removing the lid and the radioactive material within the cask would be retained by the reactor fuel handling facility containment systems with no significant release to the environment.

Improper loading of spent fuel aged for less than 5 years is readily detectable by spent fuel assembly identification, independent verification, and monitoring procedures. If an improper fuel loading should occur, the results would be limited to a marginally higher storage temperature and possibly a slight increase in radiation from the cask. Any significant increase in temperature or radiation would be detected through procedures for cask monitoring, which have been added to the requirements in the Certificate of Compliance.

36. *Comments.* The criteria for locating storage cask sites, for ensuring adequate cooling for casks, for evaluating the adequacy of radiation shielding, or for other aspects of cask designs in the proposed rule have not been assessed for environmental impact.

*Response.* These technical criteria have been assessed and are currently used by the NRC for approval of cask designs under part 72. As previously mentioned, the environmental impacts related to storage of spent fuel under part 72 have been generically evaluated under two previous rulemakings and the Commission's waste confidence proceedings. Thus, these potential environmental impacts need not be reassessed.

37. *Comment.* The environmental impact of decommissioning contaminated casks after the 20-year storage period has not been assessed.

*Response.* The decommissioning of contaminated casks was discussed in the environmental assessment for this rule, which points out that decommissioning of dry cask spent fuel storage under a general license may be carried out as part of the power reactor site decommissioning plan. Decommissioning would consist of removing the spent fuel from the site and decontaminating cask surfaces. Alternately, this decontamination could

take place at a DOE operated facility. In either case, the decontamination solutions would be combined with larger volumes of contaminated solutions resulting from decontamination of the reactor or DOE facility; thus, environmental impacts from decommissioning casks are expected to be a small fraction of the overall decommissioning impacts. Also the incremental costs associated with decommissioning casks are expected to represent a small fraction of the cost of decommissioning a nuclear power reactor. It is noted that, if the decommissioning of a reactor presents no significant safety hazard and if there is no significant change in types or amounts of effluents or increase in radiation exposure, then this decommissioning is covered by a categorical exclusion under 10 CFR 51.22.

38. *Comment.* The fire in the spent fuel storage pool subsequent to the major accident at Chernobyl has not been considered in the proposed rulemaking.

*Response.* In the early stages of the Chernobyl accident a hypothesis was developed that a fire occurred in the spent fuel pool. This hypothesis was not based on observation of any real fire at the Chernobyl installation, but rather inferred from fallout spectra observed in eastern Europe. Officials of the USSR have confirmed that indeed a fire did not occur in the spent fuel pool at Chernobyl. In fact, a fire in a spent fuel storage pool is not credible and, therefore, was not considered in the proposed rulemaking.

39. *Comment.* The NRC has studied responses of loaded casks to a range of sabotage scenarios. The four casks that are referenced in the background information are all metal casks, and there is limited reference to concrete systems. Because the referenced study is classified, we do not have any indication that this study specifically addressed concrete dry storage systems with respect to small arms, fire, and explosives.

*Response.* The referenced study did not specifically consider concrete storage systems. However, the general conclusions of the study could be extended to concrete storage systems because of the difficulty of using small arms, fire, or explosives to (1) create respirable particles and (2) cause those particles to be spread off site. These difficulties derive from both the inherent resistance to dispersal of the spent fuel and the massiveness of the storage casks required to provide both shielding from radiation and protection of the spent fuel from earthquakes and tornado

missiles, which are requirements that all designs must meet.

**40. Comments.** Safeguards requirements were either inadequate or too stringent. One commenter stated that the safeguards system for the existing site cannot be considered adequate for the additional burden of spent fuel cask storage. Unless a utility commits to a location for cask storage adjacent to the reactor building, the existing safeguards can be compromised and any cask storage area should be located greater than 100 meters from the nearest public access (roadway, park, beach, etc.). Another commenter suggested that terrorists need targets and that above-ground storage of spent fuel provides terrorists with a target. It further stated that a small bomb dropped from a light plane or helicopter could spread the contents of an above-ground cask over many states. Another commenter stated that there is no reason why the licensee should be exempt from §§ 73.55(h)(4)(iii)(A) and 73.55(h)(5), which requires that guards interpose themselves between vital areas and any adversary, and respond using deadly force if necessary. Another commenter stated that § 73.55 requirements are not needed for a spent fuel storage area that is a new protected area separate from the existing reactor protected area. This commenter further stated that the background material for this proposed rule indicates that requirements should be significantly reduced from § 73.55 requirements for storage areas within a new separate protected area and, specifically, that § 72.212 should specify the requirements instead of referencing exemptions from § 73.55.

**Response.** As described in the proposed rule (54 FR 19379), none of the information the staff has collected confirms the presence of an identifiable domestic threat to cask storage facilities. Despite the absence of an identifiable domestic threat, the NRC considered it prudent to study the response of loaded casks to a range of sabotage scenarios. After considering various technical approaches to radiological sabotage, and experiments and calculations, the NRC concluded that radiological sabotage, to be successful, would have to be carried out using large quantities of explosives, not a small bomb dropped from an airplane, and that the consequences to public health and safety would be low because most of the resultant contamination would be localized to the storage site. (See response to comment 39 above.) Thus, the condition to be protected against is protracted loss of control of

the storage area. For that reason, protection requirements were proposed to provide for (1) early detection of malevolent moves against the storage site and (2) a means to quickly summon response forces to ensure protection against protracted loss of control of the storage area. Given these conditions, exemptions were provided for those § 73.55 provisions not essential to early detection of malevolent acts and for summoning local law enforcement agencies or other response forces. With the exception of one change in the rule that is being adopted (which is consistent with the intent of the proposed rule and is discussed in Comment 46), the NRC does not believe that these comments provide any new information or sufficient rationale for changing the proposed rule. Further, 10 CFR 72.106(b) requires that the minimum distance from the storage facility to the nearest boundary of the controlled area shall be at least 100 meters.

**41. Comment.** Could the cask body be the protected area boundary?

**Response.** No, because that would not meet the requirements in § 73.55(c) for an isolation zone. An isolation zone must be maintained adjacent to the physical barrier and must be of sufficient size to permit observation of the activities of people on either side of the barrier in the event of its penetration. Thus, the cask body cannot be the physical barrier.

**42. Comment.** Please clarify the requirement for a periodic inventory of the special nuclear material contained in the spent fuel.

**Response.** It is the same as the current requirement for periodic inventory of special nuclear material that is required by § 72.72 [§ 72.51]. Cask records must show the contents of the cask, including the special nuclear material. In lieu of periodically opening a cask, a licensee may use tamper indicating seals to show that the cask has not been opened. If any tamper indicating seals are broken, then the contents of the cask may have to be verified.

**43. Comment.** The requirements for vital areas are delineated in other paragraphs of § 73.55, and all vital area requirements throughout § 73.55 should be exempted in 10 CFR 72.212(b)(5)(ii), not just § 73.55(c).

**Response.** The NRC agrees with this comment. Proposed § 72.212(b)(5)(ii) states that storage of spent fuel under this general license need not be within a separate vital area. If spent fuel is not stored within a vital area (i.e., rather in a separate protected area), then regulations that pertain only to vital

areas would not apply to a spent fuel storage area.

**44. Comment.** Paragraph (b)(5)(iii) of § 72.212 should distinguish between the security requirements for an existing protected area that is expanded and a new protected area. In the case of a new protected area, § 73.55(h)(6) should not be required. Instead, the requirement should be only an alarm assessment via CCTV, guard, or watchman.

**Response.** The NRC agrees with this comment. For an existing protected area, the current requirements will continue. Proposed §§ 72.212(b)(5)(iii) and (iv) have been revised to apply only to new protected areas. Proposed § 72.212(b)(5)(iv) has been revised to allow a guard or watchman on patrol in lieu of closed circuit television to provide the necessary observational capability.

**45. Comment.** For purposes of this rule, if the licensee is exempt from §§ 73.55(h)(4)(iii)(A) and (5) (i.e., neutralize threat), then § 73.55(h)(3) requirements (i.e., number of armed responders) should also be exempted.

**Response.** The general license presumes that the same essential physical security organization and program will be applied to spent fuel storage as are currently applied to protection of the reactor. Paragraph (b)(5)(i) of § 72.212 requires that the organization and program be modified as necessary to ensure that there is no decrease in effectiveness. Accordingly, additional personnel need be added only if it is necessary to ensure that there is no decrease in effectiveness. The rule does not require an independent application of § 73.55(h)(3), which specifies the minimum number of armed responders for a spent fuel storage area.

**46. Comment.** The requirement in § 73.55(d)(1) that searches for firearms and explosives be accomplished by equipment designed for such detection should be deleted when a new protection area is added that is not contiguous with the existing protection area. The only requirement in this case should be to perform a visual search for bulk explosives. This is supported by the discussion in the Federal Register notice.

**Response.** The NRC agrees that searches for firearms and explosives for the purposes of a general license under this rulemaking need not be conducted using equipment capable of detecting these devices. Accordingly, the final rule had been revised to allow the use of physical pat-down searches, in lieu of detection equipment, for firearms and explosives searches.

47. *Comments.* Is the use of the word "defect" in § 72.216(a) consistent with the definition of "defect" in 10 CFR part 21? What is the purpose of the reporting requirements in proposed § 50.72(b)(2)?

*Response.* Section 72.216(a) states that cask users must report defects discovered in storage cask systems, structures, and components important to safety and any instance in which there is a significant reduction in the effectiveness of a cask's confinement system. This information is necessary to inform the NRC of potential hazards to the public health and safety. Proposed § 72.216(a) is not being revised to replace the word "defect," because the definition of "defect" in 10 CFR part 21 is compatible with the intent of this reporting requirement. However, proposed § 50.72(b)(2) is being revised to clarify such reporting, in order to avoid an apparent duplication of reporting requirements.

48. *Comment.* Proposed § 72.234(d)(3) requires a composite record for all casks to be maintained by the cask vendor "for the life of the cask." It further states that the vendor would not necessarily be in a position to know how long the general license will be extended; thus, this provision should be clarified.

*Response.* The intent of this section is that cask vendors should maintain a record of all casks that are fabricated and sold or leased to power reactor licensees. This record would be used by the NRC to confirm information supplied by cask users and to determine whether or not a cask vendor will submit an application for cask design reapproval. The commenter raised a valid point; thus, § 72.234(d)(3) has been revised to require only a composite record of casks fabricated.

49. *Comment.* The Commission has not demonstrated the practical utility of requiring cask fabrication initiation and completion dates to be included as part of the cask record in § 72.234(d)(2)(iv) and (v).

*Response.* The purpose for including the cask fabrication initiation and completion dates in a cask record is to ensure that any safety problem that might arise related to fabrication procedures of a particular cask model can be traced and corrected in all casks of that model. For instance, if a faulty batch of steel is fabricated into closure bolts, which could be discovered through quality assurance procedures, these fabrication dates would enable the staff to determine which specific casks were involved. Thus, corrective actions could be taken, if necessary, based on this information.

50. *Comments.* Although § 72.6(b) [§ 72.6] provides for issuance of a

general license, § 72.6(c) might be interpreted to disallow storage of spent fuel in an ISFSI by a licensee under the general license, unless the holder of such a license also has a specific license for that purpose. One commenter suggested that existing § 72.6(c) be revised or clarified to specifically provide for storage of spent fuel under a general license without the requirement for a specific license, as long as the provisions of subpart K are met.

*Response.* Paragraph 72.6(c) has been revised to make an exception of spent fuel storage under a general license according to the provisions of subpart K. Subpart K sets forth conditions under which the holder of a power reactor operating license may store spent fuel under the general license being promulgated by this rulemaking. Conditions set forth in § 72.6 are now considered sufficient to allow storage of spent fuel under the general license. However, it is not intended that this rule serve as authorization for storage of spent fuel in amounts or for durations beyond those provided for in a power reactor license.

Having considered all comments received and other input, the Commission has determined that the following final rule should be promulgated.

#### Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an Environmental Impact Statement (EIS) is not required. The finding is premised on two actions, which are (i) the licensing of an operating reactor for a particular site for which an EIS has been previously prepared and (ii) the independent certification of spent fuel storage casks for use at any reactor site. Thus, the rule does not add any significant environmental impacts and does not change any safety requirements. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

#### Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These

requirements were approved by the Office of Management and Budget with approval numbers 3150-0011 and 3150-0132.

Public reporting burden for this collection of information is estimated to average 134 hours per response for a power reactor licensee and 2,448 hours per response for a cask vendor licensee 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 the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-0011 and 3150-0132), Office of Management and Budget, Washington, DC 20503.

#### Regulatory Analysis

The Commission prepared a preliminary regulatory analysis for the proposed rulemaking on this subject. The analysis examined the benefits and impacts considered by the Commission. The Commission requested public comments on the preliminary regulatory analysis, but no comments were received. No changes to the regulatory analysis are considered necessary, so a separate regulatory analysis has not been prepared for the final rule.

#### Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This final rule affects licensees owning nuclear power reactors. Owners of nuclear power reactors do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Only one cask model is currently being used to store spent fuel under 10 CFR part 72, but an additional three cask models are being certified under § 72.214 of this final rule. Companies involved in the design, manufacture, and sale of casks are large private entities employing more than 500 persons and having sales in excess of \$1 million. Some companies involved in the actual sale of these casks may not employ over 500 persons, but have sales in excess of

\$1 million. These companies may fall within the scope of "small entities" as defined above, but there are not a substantial number of them. The Preliminary Regulatory Analysis, which was made available for public comment when the proposed rule was published, analyzed potential impacts on cask vendors. No comments were received on the analysis. In any case, cask vendors will decide whether or not to submit applications for cask design approval based on their analysis of the potential market.

**Backfit Analysis**

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

**List of Subjects**

**10 CFR Part 50**

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

**10 CFR Part 72**

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

**10 CFR Part 170**

Byproduct material, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors; Source material, Special nuclear material.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following revisions to 10 CFR part 72 and conforming amendments to 10 CFR parts 50 and 170.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE**

1. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 162, 183, 184, 186, 187, 189, 68 Stat. 929; 930, 932, 933, 934, 935, 948, 953, 954, 955, as

amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c) (d)). Section 72.48 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44 (a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10 (a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.80 (a)-(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102 (e), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949; as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (b)(3), (c)(5), (d)(3), (e), (f), 72.48 (b), (c), 72.50(b), 72.54 (a), (b), (c), 72.58, 72.70, 72.72, 72.74 (a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.148, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234 (e), and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 72.6, the introductory text of paragraph (c) is revised to read as follows:

**§ 72.6 License required; types of licenses.**

(c) Except as authorized in a specific license and in a general license under subpart K of this part issued by the Commission in accordance with the

regulations in this part, no person may acquire, receive, or possess—

3. In § 72.30, paragraph (b) is revised to read as follows:

**§ 72.30 Decommissioning planning, including financing and recordkeeping.**

(b) The proposed decommissioning plan must also include a decommissioning funding plan containing information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (c) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI or MRS.

4. New subparts K and L are added to read as follows:

**Subpart K—General License for Storage of Spent Fuel at Power Reactor Sites**

- Sec.
- 72.210 General license issued.
- 72.212 Conditions of general license issued under § 72.210.
- 72.214 List of approved spent fuel storage casks.
- 72.216 Reports.
- 72.218 Termination of licenses.
- 72.220 Violations.

**Subpart L—Approval of Spent Fuel Storage Casks**

- 72.230 Procedures for spent fuel storage cask submittals.
- 72.232 Inspection and tests.
- 72.234 Conditions of approval.
- 72.236 Specific requirements for spent fuel storage cask approval.
- 72.238 Issuance of an NRC Certificate of Compliance.
- 72.240 Conditions for spent fuel storage cask reapproval.

**Subpart K—General License for Storage of Spent Fuel at Power Reactor Sites**

**§ 72.210 General license issued.**

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under part 50 of this chapter.

**§ 72.212 Conditions of general license issued under § 72.210.**

(a)(1) The general license is limited to that spent fuel which the general licensee is authorized to possess at the

site under the specific license for the site.

(2) This general license is limited to storage of spent fuel in casks approved under the provisions of this part.

(3) The general license for the storage of spent fuel in each cask fabricated under a Certificate of Compliance terminates 20 years after the date that the particular cask is first used by the general licensee to store spent fuel, unless the cask's Certificate of Compliance is renewed, in which case the general license terminates 20 years after the cask's Certificate of Compliance renewal date. In the event that a cask vendor does not apply for a cask model reapproval under § 72.240, any cask user or user's representative may apply for a cask design reapproval. If a Certificate of Compliance expires, casks of that design must be removed from service after a storage period not to exceed 20 years.

(b) The general licensee shall:

(1)(i) Notify the Nuclear Regulatory Commission using instructions in § 72.4 at least 90 days prior to first storage of spent fuel under this general license. The notice may be in the form of a letter, but must contain the licensee's name, address, reactor license and docket numbers, and the name and means of contacting a person responsible for providing additional information concerning spent fuel under this general license. A copy of the submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(ii) Register use of each cask with the Nuclear Regulatory Commission no later than 30 days after using that cask to store spent fuel. This registration may be accomplished by submitting a letter using instructions in § 72.4 containing the following information: the licensee's name and address, the licensee's reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under this general license, the cask certificate and model numbers, and the cask identification number. A copy of each submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(iii) Fee. Fees for inspections related to spent fuel storage under this general license are those shown in § 170.31 of this chapter.

(2) Perform written evaluations, prior to use, that establish that (i) conditions set forth in the Certificate of Compliance have been met; (ii) cask storage pads

and areas have been designed to adequately support the static load of the stored casks; and (iii) the requirements of § 72.104 have been met. A copy of this record must be retained until spent fuel is no longer stored under the general license issued under § 72.210.

(3) Review the Safety Analysis Report (SAR) referenced in the Certificate of Compliance and the related NRC Safety Evaluation Report, prior to use of the general license, to determine whether or not the reactor site parameters, including analyses of earthquake intensity and tornado missiles, are enveloped by the cask design bases considered in these reports. The results of this review must be documented in the evaluation made in paragraph (b)(2) of this section.

(4) Prior to use of the general license, determine whether activities related to storage of spent fuel under this general license involve any unreviewed facility safety question or change in the facility technical specifications, as provided under § 50.59. Results of this determination must be documented in the evaluation made in paragraph (b)(2) of this section.

(5) Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth in the licensee's physical security plan pursuant to § 73.55 of this chapter with the following additional conditions and exceptions.

(i) The physical security organization and program for the facility must be modified as necessary to assure that activities conducted under this general license do not decrease the effectiveness of the protection of vital equipment in accordance with § 73.55 of this chapter.

(ii) Storage of spent fuel must be within a protected area, in accordance with § 73.55(c) of this chapter, but need not be within a separate vital area. Existing protected areas may be expanded or new protected areas added for the purpose of storage of spent fuel in accordance with this general license.

(iii) For purposes of this general license, searches required by § 73.55(d)(1) of this chapter before admission to a new protected area may be performed by physical pat-down searches of persons in lieu of firearms and explosives detection equipment.

(iv) The observational capability required by § 73.55(h)(6) of this chapter as applied to a new protected area may be provided by a guard or watchman on patrol in lieu of closed circuit television.

(v) For the purpose of this general license, the licensee is exempt from §§ 73.55(h)(4)(iii)(A) and 73.55(h)(5) of this chapter.

(6) Review the reactor emergency plan, quality assurance program, training program, and radiation protection program to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals.

(7) Maintain a copy of the Certificate of Compliance and documents referenced in the certificate for each cask model used for storage of spent fuel, until use of the cask model is discontinued. The licensee shall comply with the terms and conditions of the certificate.

(8)(i) Accurately maintain the record provided by the cask supplier for each cask that shows, in addition to the information provided by the cask vendor, the following:

(A) The name and address of the cask vendor or lessor;

(B) The listing of spent fuel stored in the cask; and

(C) Any maintenance performed on the cask.

(ii) This record must include sufficient information to furnish documentary evidence that any testing and maintenance of the cask has been conducted under an NRC-approved quality assurance program.

(iii) In the event that a cask is sold, leased, loaned, or otherwise transferred to another registered user, this record must also be transferred to and must be accurately maintained by the new registered user. This record must be maintained by the current cask user during the period that the cask is used for storage of spent fuel and retained by the last user until decommissioning of the cask is complete.

(9) Conduct activities related to storage of spent fuel under this general license only in accordance with written procedures.

(10) Make records and casks available to the Commission for inspection.

#### § 72.214 List of approved spent fuel storage casks.

The following casks are approved for storage of spent fuel under the conditions specified in their Certificates of Compliance.

Certificate Number: 1000

SAR Submitted by: General Nuclear Systems, Inc.

SAR Title: Topical Safety Analysis Report for the Castor V/21 Cask Independent Spent Fuel Storage Installation (Dry Storage)

Docket Number: 72-1000

Certification Expiration Date: August 17, 2010

Model Number: CASTOR V/21

Certificate Number: 1001

SAR Submitted by: Westinghouse Electric Corporation  
 SAR Title: Topical Safety Analysis Report for the Westinghouse MC-10 Cask for an Independent Spent Fuel Storage Installation (Dry Storage)  
 Docket Number: 72-1001  
 Certification Expiration Date: August 17, 2010  
 Model Number: MC-10  
 Certificate Number: 1002  
 SAR Submitted by: Nuclear Assurance Corporation  
 SAR Title: Topical Safety Analysis Report for the NAC Storage/Transport Cask for Use at an Independent Spent Fuel Storage Installation  
 Docket Number: 72-1002  
 Certification Expiration Date: August 17, 2010  
 Model Number: NAC S/T  
 Certificate Number: 1003  
 SAR Submitted by: Nuclear Assurance Corporation  
 SAR Title: Topical Safety Analysis Report for the NAC Storage/Transport Cask Containing Consolidated Fuel for Use at an Independent Spent Fuel Storage Installation  
 Docket Number: 72-1003  
 Certification Expiration Date: August 17, 2010  
 Model Number: NAC-C28 S/T

#### § 72.216 Reports.

(a) The general licensee shall make an initial report under § 50.72(b)(2)(vii) of this chapter of any:

(1) Defect discovered in any spent fuel storage cask structure, system, or component which is important to safety; or

(2) Instance in which there is a significant reduction in the effectiveness of any spent fuel storage cask confinement system during use.

(b) A written report, including a description of the means employed to repair any defects or damage and prevent recurrence, must be submitted using instructions in § 72.4 within 30 days of the report submitted in paragraph (a) of this section. A copy of the written report must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office shown in appendix D to part 20 of this chapter.

#### § 72.218 Termination of licenses.

(a) The notification regarding the program for the management of spent fuel at the reactor required by § 50.54(bb) of this chapter must include a plan for removal of the spent fuel stored under this general license from the reactor site. The plan must show how the spent fuel will be managed before starting to decommission systems

and components needed for moving, unloading, and shipping this spent fuel.

(b) An application for termination of the reactor operating license submitted under § 50.82 of this chapter must contain a description of how the spent fuel stored under this general license will be removed from the reactor site.

(c) The reactor licensee shall send a copy of submittals under § 72.218(a) and (b) to the administrator of the appropriate Nuclear Regulatory Commission regional office shown in appendix D to part 20 of this chapter.

#### § 72.220 Violations.

This general license is subject to the provisions of § 72.84 for violation of the regulations under this part.

#### Subpart L—Approval of Spent Fuel Storage Casks

##### § 72.230 Procedures for spent fuel storage cask submittals.

(a) An application for approval of a spent fuel storage cask design must be submitted in accordance with the instructions contained in § 72.4. A safety analysis report describing the proposed cask design and how the cask should be used to store spent fuel safely must be included with the application.

(b) Casks that have been certified for transportation of spent fuel under part 71 of this chapter may be approved for storage of spent fuel under this subpart. An application must be submitted in accordance with the instructions contained in § 72.4. A copy of the Certificate of Compliance issued for the cask under part 71 of this chapter, and drawings and other documents referenced in the certificate, must be included with the application. A safety analysis report showing that the cask is suitable for storage of spent fuel for a period of at least 20 years must also be included.

(c) *Public inspection.* An application for the approval of a cask for storage of spent fuel may be made available for public inspection under § 72.20.

(d) *Fees.* Fees for reviews and evaluations related to issuance of a spent fuel storage cask Certificate of Compliance and inspections related to storage cask fabrication are those shown in § 170.31 of this chapter.

##### § 72.232 Inspection and tests.

(a) The applicant shall permit, and make provisions for, the Commission to inspect the premises and facilities at which a spent fuel storage cask is fabricated and tested.

(b) The applicant shall perform, and make provisions that permit the Commission to perform, tests that the Commission deems necessary or

appropriate for the administration of the regulations in this part.

(c) The applicant shall submit a notification under § 72.4 at least 45 days prior to starting fabrication of the first spent fuel storage cask under a Certificate of Compliance.

##### § 72.234 Conditions of approval.

(a) Design, fabrication, testing, and maintenance of a spent fuel storage cask must comply with the requirements in § 72.236.

(b) Design, fabrication, testing, and maintenance of spent fuel storage casks must be conducted under a quality assurance program that meets the requirements of subpart G of this part.

(c) Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model.

(d)(1) The cask vendor shall ensure that a record is established and maintained for each cask fabricated under the NRC Certificate of Compliance.

(2) This record must include:

(i) The NRC Certificate of Compliance number;

(ii) The cask model number;

(iii) The cask identification number;

(iv) Date fabrication was started;

(v) Date fabrication was completed;

(vi) Certification that the cask was designed, fabricated, tested, and repaired in accordance with a quality assurance program accepted by NRC;

(vii) Certification that inspections required by § 72.236(j) were performed and found satisfactory; and

(viii) The name and address of the cask user.

(3) The original of this record must be supplied to the cask user. A current copy of a composite record of all casks manufactured under a Certificate of Compliance, showing the information in paragraph (d)(2) of this section must be initiated and maintained by the cask vendor for each model cask. If the cask vendor permanently ceases production of casks under a Certificate of Compliance, this composite record must be sent to the Commission using instructions in § 72.4.

(e) The composite record required by paragraph (d) of this section must be available to the Commission for inspection.

(f) The cask vendor shall ensure that written procedures and appropriate tests are established prior to use of the casks. A copy of these procedures and tests must be provided to each cask user.

**§ 72.236 Specific requirements for spent fuel storage cask approval.**

(a) Specification must be provided for the spent fuel to be stored in the cask, such as, but not limited to, type of spent fuel (i.e., BWR, PWR, both), maximum allowable enrichment of the fuel prior to any irradiation, burn-up (i.e., megawatt-days/MTU), minimum acceptable cooling time of the spent fuel prior to storage in the cask, maximum heat designed to be dissipated, maximum spent fuel loading limit, condition of the spent fuel (i.e., intact assembly or consolidated fuel rods), the inerting atmosphere requirements.

(b) Design bases and design criteria must be provided for structures, systems, and components important to safety.

(c) The cask must be designed and fabricated so that the spent fuel is maintained in a subcritical condition under credible conditions.

(d) Radiation shielding and confinement features must be provided sufficient to meet the requirements in §§ 72.104 and 72.106.

(e) The cask must be designed to provide redundant sealing of confinement systems.

(f) The cask must be designed to provide adequate heat removal capacity without active cooling systems.

(g) The cask must be designed to store the spent fuel safely for a minimum of 20 years and permit maintenance as required.

(h) The cask must be compatible with wet or dry spent fuel loading and unloading facilities.

(i) The cask must be designed to facilitate decontamination to the extent practicable.

(j) The cask must be inspected to ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce its confinement effectiveness.

(k) The cask must be conspicuously and durably marked with:

- (1) A model number;
- (2) A unique identification number; and
- (3) An empty weight.

(l) The cask and its systems important to safety must be evaluated, by appropriate tests or by other means acceptable to the Commission, to demonstrate that they will reasonably maintain confinement of radioactive material under normal, off-normal, and credible accident conditions.

(m) To the extent practicable in the design of storage casks, consideration should be given to compatibility with removal of the stored spent fuel from a reactor site, transportation, and ultimate

disposition by the Department of Energy.

**§ 72.238 Issuance of an NRC Certificate of Compliance.**

A Certificate of Compliance for a cask model will be issued by NRC on a finding that the requirements in § 72.236 (a) through (i) are met.

**§ 72.240 Conditions for spent fuel storage cask reapproval.**

(a) The holder of a cask Certificate of Compliance, a user of a cask approved by NRC, or the representative of a cask user must apply for a cask model reapproval.

(b) The application for reapproval of a cask model must be submitted not less than 30 days prior to the expiration date of the Certificate of Compliance. When the applicant has submitted a timely application for reapproval, the existing Certificate of Compliance will not expire until the application for reapproval has been finally determined by the Commission. The application must be accompanied by a safety analysis report (SAR). The new SAR may reference the SAR originally submitted for the cask model approval.

(c) A cask model will be reapproved if conditions in § 72.238 are met, and the application includes a demonstration that the storage of spent fuel has not, in fact, significantly adversely affected structures, systems, and components important to safety.

**PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

5. The authority citation for part 50 is revised to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 are also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat.

954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); § 50.46 (a) and (b) and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 50.7(a), 50.10(a)-(c), 50.34 (a) and (e), 50.44(a)-(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (j)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55 (f), 50.55 a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.62(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)-(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.72, a new paragraph (b)(2)(vii) is added to read as follows:

**§ 50.72 Immediate notification requirements for operating nuclear power reactors.**

- \* \* \*
- (b) \* \* \*
- (2) \* \* \*
- (vii) Any instance of:

(A) A defect in any spent fuel storage cask structure, system, or component which is important to safety; or

(B) A significant reduction in the effectiveness of any spent fuel storage cask confinement system during use of the storage cask under a general license issued under § 72.210 of this chapter.

A followup written report is required by § 72.216(b) of this chapter including a description of the means employed to repair any defects or damage and prevent recurrence, using instructions in § 72.4, within 30 days of the report submitted in paragraph (a). A copy of the written report must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office shown in appendix D to part 20 of this chapter.

**PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

7. The authority citation for part 170 continues to read as follows:

**Authority:** 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. In § 170.31, a new category 13 is added and footnotes 1 (b), (c), and (d) are revised to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections.**

Category of materials licenses and type of fee <sup>1</sup>	Fee <sup>2,3</sup>
13. A. Spent fuel storage cask— Certificate of Compliance	
Approvals.....	Full Cost.
Amendments, Revisions and Sup- plements.....	Full Cost.
Reapproval.....	Full Cost.
B. Inspections related to spent fuel storage cask—Certificate of Com- pliance	
Routine.....	Full Cost.
Nonroutine.....	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	
Routine.....	Full Cost.
Nonroutine.....	Full Cost.

<sup>1</sup> Types of fees—\* \* \*

(b) *License or approval fees*—Fees for applications for new licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal or reapproval fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs, (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

Applications to terminate licenses authorizing small materials programs, when

no dismantling or decontamination procedure is required, shall not be subject to fee.

\* \* \* \* \*  
Dated at Rockville, Maryland, this 12th day of July, 1990.

For the Nuclear Regulatory Commission.  
**Samuel J. Chilk,**  
*Secretary of the Commission.*

[FR Doc. 90-16752 Filed 7-17-90; 8:45 am]

BILLING CODE 7590-01-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 89-ASW-42; Amdt. 39-6664]

**Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, and 205A-1 Helicopters; and Certain BHTI-Manufactured Military Model UH-1L, TH-1L and UH-1H Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, and 205A-1 helicopters, and certain BHTI-manufactured military model helicopters, by individual letters. The AD requires inspection of the tail rotor hub assembly to determine the hub serial number and removal and replacement, if necessary, with an airworthy part before further flight. The AD is necessary to prevent failure of the tail rotor hub assembly which could, in turn, result in loss of control of the helicopter.

**DATES:** Effective August 15, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 89-20-12, issued September 29, 1989, which contained this amendment.

**Compliance:** Required before further flight, after the effective date of this AD, unless already accomplished.

**ADDRESSES:** Applicable AD-related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle M. Corning, Rotorcraft Directorate, Rotorcraft Certification

Office, ASW-170, FAA, Fort Worth, Texas 76193-0170; telephone (817) 624-5126.

**SUPPLEMENTARY INFORMATION:** On September 29, 1989, Priority Letter AD 89-20-12 was issued and made effective immediately as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, and 205A-1 helicopters, and certain BHTI-manufactured military model UH-1L, TH-1L and UH-1H helicopters. The AD requires an inspection of the helicopter if tail rotor hub assembly, P/N 204-011-801-121, is installed to determine the serial number. If a serial number listed in the body of the AD is installed, the tail rotor hub assembly must be removed and replaced with an airworthy part before further flight. The AD is prompted by an FAA investigation of the unapproved manufacture, assembly, and distribution of critical helicopter flight components by certain facilities and the results of a tear down inspection of one of these assemblies. The FAA determined that 10 tail rotor hub assemblies, P/N 204-011-801-121, with serial numbers (S/N) IT0001 through IT0010, may be incorrectly assembled so that the hubs may not have the required component preloads; may not be dynamically balanced; or may not conform to the approved type design. The location of all affected assemblies could not be determined by the FAA. After the priority letter was issued, an editorial change to the heading has been made for brevity. The military models have been identified as such.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued September 29, 1989, to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, and 205A-1 helicopters and certain BHTI-manufactured Model UH-1L, TH-1L, and UH-1H helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the FAR to make it effective as to all persons.

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

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 1291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, 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, and Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[Amended]

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

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

#### § 39.13 [Amended]

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

**Bell Helicopter Textron, Inc. (BHTI);**  
Hercules; Oregon Helicopters; Lenair Corporation; and Southwest Florida Aviation: Applies to Model 204B, 205A, 205A-1, UH-1L, TH-1L, UH-1H helicopters, certificated in any category.

(Docket No. 89-ASW-42)

Compliance is required as indicated, unless already accomplished.

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

(a) Before further flight, determine the part number and serial number of the tail rotor hub assembly installed on the helicopter.

(b) If the tail rotor hub assembly installed is P/N 204-011-801-121 and is identified with any serial number IT0001 through and including IT0010, remove and replace the

assembly with an airworthy part before further flight.

(c) If one of the tail rotor hub assemblies listed in paragraph (b) is found, report the helicopter registration, serial number, and hub assembly serial number to the Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193-0170, telephone (817) 624-5170, within 10 days of the inspection. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

(d) In accordance with FAR 21.197 and 21.199, the helicopter may be flown to a base where the inspection and assembly replacement may be accomplished.

(e) An alternate method of compliance, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5170

This amendment becomes effective August 15, 1990 as to all persons except those persons to whom it was made immediately effective by Priority Letter AD89-20-12, issued September 29, 1989, which contained this amendment.

Issued in Fort Worth, Texas, on July 9, 1990.

**James D. Erickson,**  
Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-16780 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-NM-249-AD; Amdt. 39-6665]

#### Airworthiness Directives; Boeing Model 737-300 and 737-400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 and -400 series airplanes, which requires modifications to the engine fire and overheat detection system. This amendment is prompted by reports of false fire and overheat warnings that have resulted in engine in-flight shutdowns and airplane diversions. This condition, if not corrected, could result in additional unnecessary engine in-flight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane.

**EFFECTIVE DATE:** August 23, 1990.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be

examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1964. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 and -400 series airplanes, which requires modifications to the engine fire and overheat detection system, was published in the Federal Register on January 11, 1990 (55 FR 1043).

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

Four commenters questioned the justification for the proposed rule and stated that there is no data to indicate that the Model 737-300 and -400 have a worse fire/overheat rate than any other model. The FAA does not concur that the proposed rule is unjustified. The FAA has reviewed currently available data and has found that a significant portion of the report shutdowns on the Model 737 were attributed to false fire/overheat warnings. Therefore, AD action is necessary to avert the possibility of unnecessary in-flight engine shutdown and airplane diversions that unduly jeopardize continued safe operation of the airplane.

Three commenters stated that the rule is unnecessary because the education process in place teaches operators the proper procedures for cleaning electrical connectors with methyl alcohol or acetone, rather than chloride-based cleaners, which resulted in corrosive contamination. The FAA does not concur that the proposed rule is unnecessary. The FAA has determined that corrosion of the hermetically sealed connectors can be attributed to improper installation, as well as contaminants introduced at the time of installation. Therefore, to ensure safety of the fleet, the FAA has determined that AD action is necessary to prevent false engine fire/overheat warnings.

Three commenters noted that the Notice incorrectly stated that

modification parts will be provided free of charge to the operators, when in fact, only the aircraft wiring modifications outlined in Boeing Service Bulletin 737-26-1051, dated February 28, 1988, will be provided at no cost to the operators, and not the Kidde components. The FAA concurs, and the economic analysis paragraph in the final rule has been revised to accurately reflect these costs to operators.

Three commenters requested that the compliance time be extended from the proposed 6 months to a more realistic 18 months, based upon a parts availability problem. The FAA concurs. Upon further investigation, the FAA has concluded that sufficient hardware to retrofit the entire fleet would not be available within 6 months; therefore, the final rule has been revised to extend the compliance time to 18 months, within which time adequate parts will become available.

The manufacturer noted that the modification described in Service Bulletin 737-26-1051, dated February 28, 1988, does not warrant AD action because wire breakage in the detector loop would not result in false fire/overheat indications. The FAA concurs. The final rule has been revised to delete the modification described in Service Bulletin 737-26-1051. The FAA has determined that safety of the fleet would not be affected with this deletion because if a wire in the integrity switch breaks, a fault would be indicated to the crew and the other operable loop could be selected. Further, it is highly unlikely that more than a single wire, on a single engine, would be broken before being detected by a crewmember.

To avoid the more costly mandatory connector replacement proposed in the Notice, the Air Transport Association (ATA) of America requested that the FAA consider an inspection procedure as an alternative. The FAA does not concur. The degree of assurance necessary as to the adequacy of inspection needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The modification requirements of this action are in consonance with that policy decision. However, the FAA will review

all potential inspection procedures on a case-by-case basis as an alternate means of compliance, as provided by paragraph B. of the final rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 640 Model 737-300 and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 350 airplanes of U.S. registry will be affected by this AD, that it will take approximately 31 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Modification parts are estimated to cost \$6,028 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,543,800.

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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

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

#### PART 39—[AMENDED]

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

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

#### § 39.13 [Amended]

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

**Boeing:** Applies to Model 737-300 and 737-400 series airplanes, equipped with Kidde engine fire and overheat detection systems, as listed in Boeing Service Bulletin 737-26-1055, Revision 1, dated September 14, 1989, certificated in any category. Compliance is required within 18 months after the effective date of the AD unless previously accomplished.

To reduce false engine fire and overheat warnings, which could result in unnecessary engine in-flight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane, accomplish the following:

A. Modify the engine fire and overheat detection system on each engine in accordance with Boeing Service Bulletin 737-26-1055, Revision 1, dated September 14, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

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

This amendment becomes effective August 23, 1990.

Issued in Seattle, Washington, on July 9, 1990.

Darrell M. Pederson,  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.  
[FR Doc. 90-16761 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-NM-29-AD; Amt. 39-6657]

**Airworthiness Directives: Mitsubishi Heavy Industries, Ltd., Model YS-11 and YS-11A Series Airplanes**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Mitsubishi Model YS-11 and YS-11A series airplanes, which requires repetitive inspections of the propeller high stop withdrawal relay, and installation of a placard showing operating procedures for the high pressure cock (H.P.C.) lever during slow flight. This amendment is prompted by two incidents in which the propeller high stop withdrawal relay did not function, resulting in forced landings. This condition, if not corrected, could result in additional incidents of propeller high stop relays failing to withdraw and forced landings.

**EFFECTIVE DATE:** August 20, 1990.

**ADDRESSES:** The applicable service information may be obtained from Nagoya Aircraft Works Mitsubishi Heavy Industries, Ltd., 10 Oye-cho, Minato-Ku, Nagoya 455, Japan; Attention: K. Saitoh, Manager, YS-11 Group, Service Department. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Kush, Aerospace Engineer, ANM-143L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5263.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Mitsubishi Model YS-11 and YS-11A series airplanes, which requires repetitive inspections of the propeller high stop withdrawal relay, and installation of a placard showing operating procedures for the high pressure cock (H.P.C.) lever during slow flight, was published in the Federal Register on March 30, 1990, (55 FR 11950).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were received in response to the proposal.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 165 Model YS-11 and YS-11A series airplanes of the affected design in the worldwide fleet. It is estimated that 42 airplanes of U.S. registry will be affected by this AD. The required inspection will take approximately 4 manhours per airplane to accomplish; installation of required decal will take approximately 1 manhour per airplane to accomplish. The average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$8,400.

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 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-448, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

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

**Mitsubishi Heavy Industries, Ltd (formerly Nihon Aeroplane Manufacturing Company, NAMC):** Applies to Model YS-11 and YS-11A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent incidents of propellers failing to withdraw, accomplish the following:

A. Within 1,000 flight hours after the effective date of this AD:

1. Inspect the propeller high stop withdrawal relay in accordance with the accomplishment instructions of Mitsubishi NAMC YS-11 Service Bulletin 61-5, dated December 20, 1988. If any abnormality is detected, replace the relay prior to further flight.

2. Install Decal 01-81717-27 in accordance with Mitsubishi NAMC YS-11 Service Bulletin 15-27, dated December 20, 1988.

B. Repeat the inspection of the propeller high stop withdrawal relay at intervals not to exceed 3,000 flight hours after the initial inspection or after replacement, in accordance with Mitsubishi NAMC YS-11 Service Bulletin 61-5, dated December 20, 1988. If any abnormality is detected, replace the relay prior to further flight.

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

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Nagoya Aircraft Works Mitsubishi Heavy Industries, Ltd., 10 Oye-cho, Minato-Ku, Nagoya 455, Japan; Attention: K. Saitoh, Manager, YS-11 Group, Service Department. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles

Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective August 20, 1990.

Issued in Seattle, Washington, on July 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-18782 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amdt.**

**AGENCY:** Department of the Navy, DOD.  
**ACTION:** Final Rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has (1) determined that USS TORTUGA (LSD-46) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval dock landing ship, and (2) has directed that certain corrections and deletions be made to the tables in the existing part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332, Telephone Number: (202) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy

amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS TORTUGA (LSD-46) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the Judge Advocate General of the Navy has determined that the existing tables of 32 CFR 706.2 should be revised to remove information that is no longer required.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on USS TORTUGA (LSD-46) in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine Safety, Navigation (Water), and Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR part 706 is amended as follows:

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

Authority: 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	No.	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
USS Leahy.....	CG-16.....	0.3

**§ 706.2 [Amended]**

3. Table Five of § 706.2 is amended by deleting the following vessels:

- USS LEAHY CG 16
- USS IWO JIMA LPH 2
- USS OKINAWA LPH 3
- USS GUADALCANAL LPH 7
- USS GUAM LPH 9
- USS TRIPOLI LPH 10
- USS NEW ORLEANS LPH 11
- USS INCHON LPH 12

**§ 706.2 [Amended]**

4. Table Five of § 706.2 is amended by deleting the existing column heading text that reads "Forward masthead light less than the required height above the hull. Annex I, section 2(a)(i)."

**§ 706.2 [Amended]**

5. Table Five of § 706.2 is amended by deleting the existing column heading text that reads "Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)."

**§ 706.2 [Amended]**

6. Table Five of § 706.2 is amended by deleting the existing column heading text that reads "Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(f)."

**§ 706.2 [Amended]**

7. Table Five of § 706.2 is amended by deleting the existing column heading text that reads "Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)."

**§ 706.2 [Amended]**

8. Table Five of section 706.2 is amended by adding the following vessels:

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS LEAHY.....	CG-16.....	.	X	X	30
USS IWO JIMA.....	LPH-2.....	.	X	X	12
USS OKINAWA.....	LPH-3.....	.	X	X	13
USS GUADALCANAL.....	LPH-7.....	.	X	X	11
USS GUAM.....	LPH-9.....	.	X	X	11
USS TRIPOLI.....	LPH-10.....	.	X	X	12
USS NEW ORLEANS.....	LPH-11.....	.	X	X	10
USS INCHON.....	LPH-12.....	.	X	X	11
USS TORTUGA.....	LSD-46.....	.	.	X	64

9. The foregoing amendment of 32 CFR part 706 is approved.

Dated: June 28, 1990.

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

Dated: July 5, 1990.

Sandra M. Kay

Alternate Federal Register, Certifying Officer.

[FR Doc. 90-16719 Filed 7-17-90; 8:45 am]

BILLING CODE 3810-AE-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3810-7]**

**Approval and Promulgation of Implementation Plans; Illinois**

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice of final rulemaking.

**SUMMARY:** USEPA is approving a State Implementation Plan (SIP) revision for ozone submitted by the State of Illinois. This revision will reduce emissions of volatile organic compounds (VOC) from gasoline by limiting the Reid Vapor Pressure (RVP) of gasoline sold during July and August of 1990 to 9.5 pounds per square inch (psi). USEPA is also making a finding that the Illinois regulation is "necessary to achieve" the national ambient air quality standard (NAAQS) for ozone and is therefore excepted from preemption under section 211 of the Clean Air Act (Act). The intended effect of today's approval of Illinois' rule to make, as expeditiously as practicable, reasonable further progress towards attainment of the ozone NAAQS as required under the Act.

**EFFECTIVE DATE:** This action will be effective August 17, 1990.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Cheryl L. Newton, at (312) 886-6081, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Cheryl L. Newton, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6081.

**SUPPLEMENTARY INFORMATION:** This notice described USEPA's decision to approve a revision to the Illinois SIP, which limits the volatility of gasoline from July 1 to August 31 of 1990. The remainder of this preamble is divided into three sections. The first provides the background for this action, with respect to both chronology and the board issues involved. The second section presents today's action and USEPA's rationale. The third section summarizes the comments received on the proposed action and USEPA's responses to them.

**Background**

On February 15, 1990, the Illinois Pollution Control Board (IPCB) adopted R88-30(A) as an amendment (§ 215.585) to subpart Y: Gasoline Distribution, title 35 of the Illinois Administrative Code. Section 215.585 is entitled "Gasoline Standards" and prohibits persons from selling, supplying, or transporting for use

in Illinois gasoline from a bulk plant or terminal having an RVP greater than 9.5 pounds per square inch from July 1 through August 31, 1990. IPCB adopted revisions to the rule on March 22, 1990,<sup>1</sup> Illinois submitted these rules on April 6, 1990, and May 4, 1990, respectively.<sup>2</sup> USEPA, today is approving the IPCB's rule, as revised, for the period in which it is in effect.

**Federal Preemption**

On March 22, 1989, USEPA published a notice (54 FR 11868) taking final action on Phase I of the national regulations of RVP, to take effect beginning in 1989. The maximum allowable summertime RVP in Illinois under Phase I of the Federal regulation is 10.5 psi. (During July and August, the maximum allowable RVP in Illinois south of 40 degrees latitude is 9.5 psi.) Phase II of the Federal regulation was published on June 11, 1990, (55 FR 23657). Under Phase II of the Federal regulation, the maximum allowable summertime RVP in Illinois beginning in 1992 is 9.0 psi.

Under section 211(c)(4) of the Act, USEPA's final action on national regulation of RVP preempted inconsistent State control of RVP, except in California. In its final action,

<sup>1</sup> The revisions addressed the deficiencies noted by USEPA and corrected language in two other subsections where the February 15, 1990, rule, as published, inadvertently contained language from the first notice, rather than the final adopted rule.

<sup>2</sup> Pursuant to section 27(c) of the (Illinois) Environmental Protection Act and § 5.02 of the Illinois Administrative Procedure Act, the IPCB adopted R88-30(A) as a temporary emergency rule for 150 days without utilizing the usual rulemaking procedural steps. In this case, the 150 days encompasses the regulatory control period of July and August of 1990 and allows time for further consideration of permanent volatility regulations for implementation in 1991. This future rule has already been proposed and is awaiting the preparation of an economic impact study.

USEPA noted that States could be exempted from preemption only if USEPA finds it is "necessary" to achieve the NAAQS as provided in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which and exception to Federal preemption of State regulation may occur, states:

A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

In its March 22, 1989, notice, USEPA made specific note of the conditions for USEPA approval of State specific RVP regulations.

#### Proposal of Illinois' Plan

On May 21, 1990, USEPA published a notice (55 FR 20606) proposing approval of the Illinois SIP revision. USEPA also proposed to find that this revision was "necessary" to achieve the NAAQS for ozone within the meaning of section 211(c)(4)(C) of the Act and, thus, meets the requirements for an exception to Federal preemption.

#### Description of Today's Action

USEPA today approves R88-30(A) as revision to the Illinois SIP. It limits gasoline volatility to 9.5 psi between July 1 and August 31 of 1990. USEPA is also explicitly finding that the Illinois revision is "necessary to achieve" the NAAQS for ozone within the meaning of section 211(c)(4)(C) of the Act. This means that Illinois' RVP regulation is not preempted by the Federal RVP regulations promulgated on March 22, 1989, as discussed below.

In approving the Illinois RVP SIP revision, USEPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval into the SIP.

In this case, because USEPA has promulgated Federal RVP regulations, section 211(c)(4)(A) preempts inconsistent State control. However, section 211(c)(4)(C) provides that the Administrator may except a State RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the Illinois revision must

satisfy both section 110 and 211 requirements to gain approval.

USEPA has concluded that the Illinois regulation is "necessary" to achieve the ozone NAAQS. In reaching this conclusion, USEPA has followed the test first articulated in approving the Maricopa County, Arizona SIP (53 FR 17413 [May 18, 1988] and 53 FR 30228 [August 10, 1988]) and later presented in the proposed approval of the Illinois revision.<sup>3</sup> USEPA stated in the proposal that if, after accounting for the possible reductions from all other reasonably available control measures, it could be demonstrated that RVP controls, among other measures, are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). USEPA will not interpret that provision to require a State to impose more drastic measures, such as driving prohibitions or source shutdowns, before it can adopt its own fuel control program.

As discussed in the notice of proposed rulemaking, USEPA's analysis of the Chicago area zone problem, pursuant to the development of a Federal Implementation Plan, indicates that Illinois needs volatile organic compound (VOC) emission reductions on the order of approximately 71 percent from 1988 emission inventory levels to achieve the ozone NAAQS. USEPA reviewed approximately 50 potential control measures in addition to RVP control and found that the cumulative total of all practicable control strategies (excluding such drastic measures as driving prohibitions and source shutdowns) and existing control programs (i.e., USEPA's Federal Motor Vehicle Control Program, Phase I National RVP control, and the recently promulgated National Emission Standard for Hazardous Air Pollutants for benzene (54 FR 38044)) yield approximately a 47 percent reduction from 1988 levels. This leaves at least a 24 percent shortfall from the reduction target of 71 percent.

USEPA continues to believe that the fact that the State RVP regulation might not by itself fill the shortfall and hence by itself achieve the standard does not mean the rule is not "necessary to achieve" the NAAQS. It is simple logic that "necessary" is not the same as "sufficient." USEPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when no other measures that

USEPA or the State has found reasonable are able to achieve this reduction. Beyond such identified "reasonable" measures, USEPA need look at other measures before RVP control, only if it has clear evidence that RVP control would have greater adverse impacts than those alternatives. USEPA has no such evidence here. Therefore, USEPA defers to Illinois' apparent view that RVP control is itself a reasonable measure. Thus, USEPA concludes that Illinois' RVP regulation is "necessary" to achieve the NAAQS and that the Federal RVP program does not preempt USEPA's approval of the Illinois rule.

#### Summary of Public Comments and USEPA's Responses

Public comment was solicited on the proposed SIP revision and on USEPA's proposed rulemaking action. Five comments were received. A summary of the comments received and USEPA's responses are given below.

##### Comment

Toyota Technical Center, U.S.A., Inc. (Toyota) commented that arbitrary reduction of RVP could negatively effect cold starting and driving of vehicles when cold because the lower vaporization pressure inhibits the proper mixing of air and fuel in cold engines. In addition, Toyota stated that tailpipe emissions would increase because the driver would make up for the cold driveability deficiency by stepping much harder on the accelerator when operating a vehicle. To avoid these adverse affects, Toyota recommended that USEPA make it mandatory to preserve the current distillation characteristics of gasoline in conjunction with the reduction of RVP.

##### USEPA's Response

USEPA can only rulemake on the Illinois rule in front of it, which does not contain a distillation characteristic standard. Therefore, we cannot unilaterally impose such a condition without promulgating a Federal substitute rule. Further, Toyota's comments on the Illinois RVP SIP revision appear to be based on Toyota's March 21, 1990, analysis and comments on the proposed Gasoline Composition Regulations of the California Air Resources Board. These proposed regulations would require an RVP limit of 8.0 psi from April 1 through October 31. The Illinois SIP revision requires the RVP of gasoline to be no higher than 9.5 psi only during the summer months of July and August, months where the temperature in Illinois rarely drops below 50° Fahrenheit.

<sup>3</sup> Although the 9th Circuit Court of Appeals vacated this SIP approval on other grounds, the Court did not comment adversely on USEPA's findings related to Federal preemption. (See *Dolaney v. USEPA*, 9th Cir. No. 88-7388, Slip Op., March 1, 1990.)

Finally, the experiences of California, which has required 9.0 psi fuel for many years, and several Northeast States, which required 9.0 psi fuel beginning in 1989, revealed no evidence of widespread driveability problems, despite significant operation at cool temperatures and high elevations. Therefore, USEPA does not believe that concerns about cold start and driveability problems due to the Illinois RVP rule are warranted.

#### *Comment*

The Illinois Environmental Protection Agency (IEPA) submitted technical comments concerning the emission reduction benefits of the gasoline volatility program. IEPA refined USEPA's general analysis, which had been developed during work on the Federal Implementation Plan for the Chicago area. IEPA's analysis looked at statewide emission reduction benefits and took into account the fact that Phase I of the Federal volatility program currently 9.5 psi fuel south of 40 degrees latitude during July and August. IEPA's analysis also included a detailed estimate of the emission reduction benefits available from point and area sources. Further, IEPA's analysis computed the emission reduction benefits for the summer 1990 only, because the emergency rule is valid for 1990. IEPA's analysis indicated an emissions reduction benefit of 147.82 tons per day (TPD) in the Chicago Consolidated Metropolitan Statistical Area, no credit in the Illinois portion of the St. Louis Metropolitan Statistical Area,<sup>4</sup> and 60.04 TPD in the rest of the State. The total emission reduction benefit from the Illinois emergency rule 207.86 TPD during 1990.

#### *USEPA Response:*

USEPA concurs with IEPA's analysis.

#### *Comment:*

Three members of the petroleum industry commented on the issue of lead time. CITGO Petroleum Corporation (CITGO) stated that it would comply with the Illinois regulation when approved; however, CITGO stated that an additional 60 to 75 days would be needed beyond the proposed July 1 compliance date to convert existing Midwest inventory and inventory in transit from the Gulf Coast to compliance fuel. Mobil Oil Corporation recognized that reduced gasoline volatility may make a significant contribution to achieving the ozone NAAQS but requested a minimum of 45

days from the date of final approval to assure that compliance can be met at all locations. Finally, Amoco Oil Company (Amoco) expressed its support of the Illinois regulation (as well as for Phase II of the Federal volatility program which will require 9.0 psi gasoline in Illinois beginning in 1992). Amoco stated that it has prepared for and will be supplying gasoline that meet the 9.5 psi standard, beginning July 1, 1990.

#### *USEPA's Response:*

Although two of the commenters stated that lead time was necessary in order to change to 9.5 psi fuel, the majority of the Illinois gasoline industry either did not comment or expressed support of the Illinois regulation. The industry has been on notice since Illinois adopted its rule on March 22, 1990, that 9.5 psi fuel would be needed in northern Illinois in July and August 1990. This 3 month notice should have given the commenters ample time to secure compliance fuel for the period, particularly because 9.5 psi fuel is already Federally required south of 40 degrees latitude in Illinois. In fact, during the field inspections in support of the Federal volatility program, USEPA has found that the majority of the fuel in the Chicago area already meets or is below the 9.5 psi standard. While some suppliers may not be able to use their traditional fuel supply and distribution networks, USEPA believes that there is adequate low volatility fuel available to meet the market's demand.

A final issue USEPA has considered in determining the effective date involves the air quality consequences of delaying the action. Illinois' submittal of the RVP revision was clearly aimed at getting its regulatory program in place for the 1990 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the program.

In deciding to make this action effective 30 days from the date of publication, USEPA has attempted to balance these competing interests. USEPA believes that this effective date will both minimize possible difficulties the industry might encounter with a shorter lead-time and provide the citizens of Illinois as much relief as is practicable during the 1990 ozone season. Although it is apparent that some suppliers have made a good faith effort to comply with the July 1 effective date specified in the Illinois rule, they were under no obligation to do so. The Agency cannot, therefore, select an earlier effective date for all suppliers based on the voluntary actions of some. However, in light of the fact that low volatility fuel is available and that much

of the gasoline distribution network is shared, the Agency does not believe that an additional 60 to 75 days lead-time is warranted. Therefore, USEPA is making this action effective 30 days from the date of publication.

#### *Comment*

Amoco and Mobil commented on the issues of testing tolerances and alternative test methods. Amoco notes that in its final rulemaking on Phase II of the Federal Volatility Program, USEPA adopts a policy of taking enforcement action only when USEPA measures the RVP at more than 0.3 psi RVP greater than the applicable standard. Amoco states that if Illinois proceeds with its plans for adopting a 9.0 psi standard beginning in 1991, a 0.3 psi test tolerance and the most current Federally approved test methods should be included. Mobil also suggests that USEPA make it clear to States that they are permitted to adopt an appropriate testing tolerance for enforcement purposes, and that a provision for new test methods as they become available and approved by USEPA may be included.

#### *USEPA Response*

Again, as stated above, USEPA can only rulemake on the plan in front of it, which does not address either of Mobil's concerns. USEPA is not in a position to evaluate what Illinois may do in any future State volatility regulation. Further, Illinois modeled its current gasoline volatility regulation after Phase I of the Federal rule. According to Phase I of the Federal Volatility Regulation, gasoline refiners and other regulated parties are expected to meet applicable RVP standards in-use. In other words, they must take variability into account in producing (and marketing) gasoline and cannot rely on USEPA to automatically provide an enforcement tolerance in addition to the RVP standard. Although Phase II of the Federal rule will provide a 0.3 psi test tolerance beginning in 1992, the current Illinois regulation mirrors the current Federal rule in regard to test tolerance and test methods, for the period in which it is in effect. Finally, Illinois has the right to adopt more stringent regulations to further its efforts toward development of a plan to assure the attainment and maintenance of the ozone NAAQS.

#### *Final Action*

USEPA is approving R88-30(A) as a revision to the Illinois SIP for ozone to control gasoline volatility. USEPA also makes the finding that the Illinois SIP revision meets the requirements of

<sup>4</sup> The St. Louis area is below 40 degrees latitude, and, thus, Illinois' rule is equivalent to the Federal rule there and no additional emission reductions are obtained.

section 211(c)(4)(C) of the Act for an exception to Federal preemption.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

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

Dated: July 10, 1990.

William K. Reilly,  
Administrator.

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.720 is amended by adding paragraph (c)(81) to read as follows:

**§ 52.720 Identification of plan.**

(c) \* \* \*

(81) On April 6, 1990, and May 4, 1990, Illinois submitted a regulation which reduced the maximum allowable volatility for gasoline sold in Illinois during July and August 1990 to 9.5 pounds per square inch.

(i) Incorporation by reference

(A) Title 35: Environmental protection, Subtitle B: Air pollution, Chapter I: Pollution control board, Part 215, Organic material emission standards and limitations, § 215.585, Gasoline volatility standards, Adopted at 14

Illinois register 6434, effective April 11, 1990.

\* \* \* \* \*

[FR Doc. 90-16649 Filed 7-17-90; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 52**

[FRL-3789-2]

**Alternative Emission Control Plan for the Union Carbide Corp. Taft Plant, Hahnville, LA**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** EPA is approving the Union Carbide Corporation Taft Plant Alternative Emission Reduction Plan request ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). This volatile organic compound (VOC) Bubble request identifies credits from the shutdown of a Glyoxal Reactor Column vent and five storage tank service changes in lieu of controls being placed on two VOC storage tanks. The Emission Reduction Credits (ERCs) were determined to be valid consistent with the provisions for bubbles outlined in EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986 (51 FR 43814).

**DATES:** This action will be effective September 17, 1990, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the submittal are available for public inspection during normal business hours at:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Building, 625 North Fourth Street, P.O. Box 44066, Baton Rouge, Louisiana 70804. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A[N]P), 1445 Ross Avenue, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Bill Riddle, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides & Toxics Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7214 or FTS 255-7214.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 19, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan for the Union Carbide Corporation Taft Plant located at Hahnville, St. Charles Parish. This area is currently designed nonattainment for ozone. The area is not expected to be redesignated until sufficient attainment data is collected. Currently, no ozone monitor is functioning in this area. There was not a Post 1987 SIP Call issued to this area, and there was no Post 1982 SIP Call. Because there is a reduction in VOC emissions it is not anticipated that any health problems would arise in the area because of this bubble. The submittal contained certification that adequate notice and a public hearing were provided for the proposed alternate emission reduction plan. Union Carbide's Taft Plant proposed using emission reductions from the shutdown of a Glyoxal Reactor Column vent and changes in materials stored in tanks in lieu of controlling the emissions from two fixed roof volatile organic compound (VOC) storage tanks. Total noncompliance emissions from the tanks are 10.75 TPY.

Before shut down in May of 1980, the Glyoxal Reactor Column vent had emissions after control of 9.9 TPY. Five tanks had changes made in the substances stored which reduced emission by 3.69 TPY.

Accounting for the Glyoxal shutdown and the tank service changes, total proposed credits of 13.59 TPY were to cover the excess emissions of 10.75 TPY from the two tanks, leaving a 2.84 TPY net air quality benefit. The total trade is summarized below:

Credit from vent shutdown (-9.9 TPY)	+	Credit from tank changes (-3.69 TPY)	+	Noncompliance emissions from two storage tanks (10.75 TPY)	=	Net air quality benefit (-2.84 TPY)
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Sources	Emissions (tons/year)					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
VOC storage tanks .....	10.9	10.9	0.00	0.15	10.9	+10.75
Tank changes.....	3.76	0.07	-3.69	3.76	0.07	-3.69
Glyoxal vent shutdown.....	9.9	0.0	-9.9	9.9	0.0	-9.9
<b>Total.....</b>	<b>24.56</b>	<b>10.97</b>	<b>-13.59</b>	<b>13.81</b>	<b>10.97</b>	<b>-2.84</b>

## B. Discussion

The Bubble was reviewed for compliance with the requirements of section 110 of the Clean Air Act, 40 CFR part 51, EPA's proposed Emissions Trading Policy Statement (ETPS) of April 7, 1982 (47 FR 15076), and the final ETPS of December 4, 1986 (51 FR 43814). This bubble is a pending bubble. The final ETPS states that pending bubbles will be processed in accordance with the 1982 policy and must show that applicable standards, increments, and visibility requirements will not be jeopardized. For this reason, a pending bubble is reviewed for compliance with both the 1982 interim policy and the 1986 final policy. EPA has reviewed the State submittal and developed an Evaluation Report.<sup>1</sup> This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. The review is summarized below.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable.

First, the reductions are surplus. EPA published a proposed disapproval for this emissions trade on November 17, 1989. The reason for the proposed disapproval was that the reductions were not surplus, based on the information EPA had at the time. For a more comprehensive description of the details of the reason for the proposed disapproval, see the November 17, 1989, Federal Register notice, 54 FR 47793.

However, EPA received comments from both the Company and the State of Louisiana on the proposed disapproval. Both commenters reflected the same concept. That concept is as follows:

The regulation in effect at the time of the Bubble, Louisiana Air Quality Regulation (LAQR) 22.3, and currently in effect, specifies controls for volatile organic compounds of vapor pressure of 77.8 Millimeters (mm) Mercury (Hg) or greater. The compounds stored in the credit donating sources are all

substantially below the 77.8 mm Hg level. The replacement compounds are even lower in vapor pressure. A comparison of the compounds with vapor pressures was given as shown below:

Before change		After change	
Source/ Substance	mm Hg	Substance	mm Hg
Tank 1 (2201) glyoxal.	18.4	mixed amines....	0.01
Tank 2 (2202) glyoxal.	18.4	mixed amines....	0.01
Tank 3 (2212) Isobutanol.	12.9	methyl carbitol..	0.1
Tank 4 (2206) Isobutanol.	12.9	methyl carbitol..	0.1
Tank 5 (2314) methyl carbitol.	0.1	glycol.....	0.2

The concepts described in the proposed disapproval are valid if the compounds are subject to the regulation. In this case, however, the vapor pressures are below the threshold value for applicability of LAQR 22.3, which determines RACT for the type of tanks that are credit donating.

The final ETPS states that pending bubbles will be processed in accordance with the 1982 policy and must show that applicable standards, increments, and visibility requirements will not be jeopardized.

The 1982 policy states that only surplus reductions not currently required by law can be substituted for required reductions as part of an emissions trade without jeopardizing air quality goals. The first step in qualifying a reduction as "surplus" is to establish a level of baseline emissions. The baseline identifies the level of required emissions beyond which reductions must occur for a source to receive credit. It is generally determined by whether the area is attainment or nonattainment, and by the way the State developed its SIP.

In nonattainment areas they may be either maximum allowable emissions or actual historical emissions. To determine which baseline is appropriate, the State should examine the assumptions used in developing its demonstration of attainment.

In this case the baselines are the actual historical emissions. These are lower than the maximum allowable emissions, so the more conservative baseline is used. The State does not have a demonstration of attainment because this area is a rural ozone nonattainment area. It is correct and conservative to use the actual historical values of this trade.

The 1982 policy also allows for credits from shutdowns. A state may credit reductions from shutdowns for bubble trades if the SIP has not already assumed credit for these reductions in its attainment strategy. So long as reductions from shutdowns have not already been counted in developing an area's attainment strategy, they are an appropriate source of surplus reductions for bubble trades. A rural ozone nonattainment area does not have an attainment demonstration because the nonattainment status is presumed to be caused by sources of pollutants outside of the area. Therefore, an attainment demonstration is not appropriate. For Union Carbide, then, the use of shutdown credit from the glyoxal vent is appropriate; and the use of actual historical emissions as a baseline for tank changes of the credit donating sources is appropriate.

Second, the emissions reductions are enforceable at the State level through a permit granted by the Louisiana Air Quality Division to Union Carbide, and will be enforceable at the Federal level upon incorporation into the Louisiana SIP. The emissions limits are enforceable at the State level under Permit #1836T(M-1), issued on April 23, 1987, and revised on May 5, 1990, by the Louisiana Department of Environmental Quality (LDEQ).

Third, the emission reductions are permanent because the Glyoxal unit was dismantled in December 1981, and the tanks which had service changes now have a permanent emissions limit as indicated in permit #1836T(M-1).

Fourth, calculations quantifying all of the emissions involved in the trade were submitted to EPA in permit #1836T(M-1).

<sup>1</sup> Evaluation Report for the Alternative Emission Control Plan for the Union Carbide, Taft Plant, June 1990.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 17, 1990, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 17, 1990.

#### C. Final Action

Because the State and Union Carbide have fulfilled all the requirements of the Final Emissions Trading Policy of EPA, EPA approves the Union Carbide Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana SIP. The approved LDEQ permit for this trade is #1836T (M-1) dated April 23, 1987, and revised May 5, 1990.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a Table 3 Action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52.

Air Pollution Control, Hydrocarbons, Incorporation by reference, Ozone.

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

Dated: June 8, 1990.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

#### Subpart T—Louisiana

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.970 is amended by adding paragraph (c)(55) to read as follows:

#### § 52.970 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(55) A revision to allow an alternative emission reduction plan ["bubble"] for the Union Carbide facility in Hahnville, Louisiana, as submitted by the Governor on October 19, 1983, and amended by Louisiana Department of Environmental Quality Air Quality Division permit #1836T(M-1) issued April 23, 1987, and revised on May 5, 1990.

(i) Incorporation by reference

(a) Louisiana Department of Environmental Quality Air Quality Division permit #1836T(M-1), issued April 23, 1987, and revised on May 5, 1990.

(ii) Additional material

None.

[FR Doc. 90-16758 Filed 7-17-90; 8:45 am]

BILLING CODE 6560-50-m

#### 40 CFR Part 61

[FRL-3810-9]

#### National Emission Standards for Hazardous Air Pollutants; Radionuclides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stay.

SUMMARY: Today's action announces a 60-day stay pending judicial review of subpart I of 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Non-DOE Federal Facilities (54 FR 51654 December 15, 1989). EPA is issuing this stay pursuant to section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, which grants the Administrator discretion to postpone the effective date of Agency rules pending judicial review, which for 40 CFR part 61, subpart I, (Subpart I), is ongoing in the United States Court of Appeals for the D.C. Circuit. Also relevant to this decision is that EPA is currently reconsidering subpart I. This action extends the existing stay granted by the Administrator pursuant to the same authority, on March 15, 1990, 55 FR

10455 (March 21, 1990), which in turn extended the stay put in place at the time of promulgation of subpart I, on December 15, 1990, which stay was granted pursuant to the Clean Air Act section 307(d)(7)(B) 54 FR 51654 (December 15, 1989).

EFFECTIVE DATE: Effective July 13, 1990, subpart I of 40 CFR part 61 is stayed until September 11, 1990.

FOR FURTHER INFORMATION CONTACT: Fran Cohen, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 475-9610.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the ambient (outdoor) air from several source categories, including emissions from Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities. This rule was published in the *Federal Register* on December 15, 1989 (54 FR 51654; to be codified at 40 CFR part 61, subpart I) (subpart I). At the same time, EPA granted reconsideration of subpart I. 54 FR 51667-51668. In so doing, EPA established a 60-day period to receive further information and comments on these issues, and also granted a 3-month stay of subpart I as provided by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expired on March 16, 1990. On March 15, 1990, EPA announced that it was extending the existing stay for 120 days pending judicial review pursuant to section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, 55 FR 10455 (March 21, 1990).

At least 11 petitions for review, made pursuant to Clean Air Act section 307, 42 U.S.C. 7607, challenging EPA's radionuclide NESHAPs (54 FR 51654 December 15, 1989) have been filed with the United States Court of Appeals for the DC Circuit. Some of these petitions take issue with the rulemaking generally, while others are narrowly addressed to particular source categories such as subpart I. For instance, the Nuclear Management and Resources Council, Inc. ("NUMARC") has petitioned only insofar as the rules apply to nuclear power plants and fuel fabrication facilities (DC Circuit Case No. 90-1073), and thus its petition challenges only aspects of subpart I. In

any event, all petitions have been consolidated by the court, *sua sponte*, under the heading *FMC Corp. v. EPA*, No. 90-1057 (DC Cir.).

**B. Issuance of Stay**

EPA today further stays, pending judicial review, for an additional 60 days until September 11, 1990, the NESHAP for NRC-Licensees and Non-DOE Federal Facilities, 40 CFR part 61, subpart I. This stay is issued pursuant to the authority granted by section 10(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, and is intended to have the effect of continuing in place the stay initially issued by EPA pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), on December 15, 1989, 54 FR 51668, and extended for 120 days by subsequent stay issued on March 15, 1990, pursuant to APA section 10(d), 55 FR 10455 (March 21, 1990). APA section 10(d) states that "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." Therefore, because petitions challenging this rule have been filed with the D.C. Circuit (e.g. NUMARC's petition), EPA is authorized to issue this stay. In addition, should the D.C. Circuit at some future point determine that it lacks jurisdiction to judicially review subpart I, authority for this stay may be additionally found as inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C. 7601(a).

EPA has an ongoing proceeding for reconsideration of subpart I, announced on December 15, 1989, 54 FR 51667-51668. Because reconsideration has not concluded and no final decision has been made by the Agency as to whether to propose modification to subpart I, and given the ongoing judicial review proceedings on the D.C. Circuit, justice requires that the stay of the effective date of subpart I, be continued for 60 days. EPA believes that most facilities subject to this rule are in compliance and that, during the short period provided by this stay, their emissions are unlikely to increase. Thus, granting the stay would have little or no potential to have any adverse effects on public health, and is therefore consistent with the public interest.

Dated: July 12, 1990.  
William K. Reilly,  
Administrator.

[FR Doc. 90-16753 Filed 7-17-90; 8:45 am]  
BILLING CODE 6560-50-M

**OFFICE OF PERSONNEL MANAGEMENT**

**45 CFR Part 801**

**Voting Rights Program**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Right Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

**DATES:** This rule is effective July 16, 1990. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before August 17, 1990.

**ADDRESSES:** Send or deliver comments to Nichole Jenkins, Attorney, Office of Personnel Management, room 7541, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Nichole Jenkins, (202) 606-1701.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Brooks County, Georgia, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on July 11, 1990, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal Observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the

United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

**List of Subjects in 45 CFR Part 801**

Administrative practice and procedure, Voting rights.  
U.S. Office of Personnel Management.  
Constance Berry Newman,  
Director.

Accordingly, OPM is amending 45 CFR part 801 as follows:

**PART 801—VOTING RIGHTS PROGRAM**

1. The authority citation for part 801 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

2. Appendix A to part 801, is amended by adding alphabetically the Georgia County of Brooks to read as follows:

**§ 801.202 Time and place for filing and forms of application.**

**Appendix A**

\* \* \* \* \*

*Georgia*

*County, Place for filing: Beginning date.*

\* \* \* \* \*

Brooks; Georgian Motel, room 8, 803 East Screven Street, Quitman, GA 31643; (912) 263-9306 or 263-9307, July 17, 1990.

\* \* \* \* \*

[FR Doc. 90-16689 Filed 7-16-90; 3:27 pm]

BILLING CODE 6325-01-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 228

[Docket No. 90518-0510]

RIN 0648-AC69

## Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is issuing a final rulemaking that will allow a take (by harassment) of marine mammals incidental to exploration for oil and gas in the Chukchi Sea and the Beaufort Sea for the next 5 years. The Marine Mammal Protection Act of 1972 allows an incidental, but not intentional, take of marine mammals if certain findings are made and certain conditions are met. This rule contains requirements for monitoring, reporting and cooperating with native communities that must be met before individual companies will be granted a Letter of Authorization.

This rulemaking does not permit the actual activities associated with exploration, but rather allows a take of marine mammals incidental to exploration. The Department of the Interior's Minerals Management Service (MMS) is responsible for permitting activities associated with oil and gas exploration.

**DATES:** This rule will be effective for five years beginning August 17, 1990, except that § 228.38(a)(2) will become effective November 1, 1990.

**ADDRESSES:** Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. Send comments on the collection of information burden estimate to the Office of Information and Regulatory Affairs, Project (0648-0151), Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Margaret Lorenz, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, 301-427-2322.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (MMPA) gives the Secretary of Commerce (Secretary) authority to allow, on

request by U.S. citizens engaged in a specified activity (other than commercial fishing) in a specified geographical region, the incidental (but not intentional) taking of small numbers of marine mammals. Permission may be granted for a period of 5 years or less.

The taking of marine mammals is allowed only if NMFS finds, based on the best scientific evidence available, that the taking will have a "negligible impact" on the species or stocks and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least adverse impact on the species and its habitat and on the availability of the species for subsistence uses. Also, the regulations must include requirements for monitoring and reporting.

In 1988, the MMPA and the Endangered Species Act were amended to allow incidental takings of depleted, endangered, or threatened marine mammals. Before the 1988 amendments, section 101(a)(5) applied only to non-depleted marine mammals, and the more restrictive provisions of the MMPA prevailed which meant that an incidental take of endangered or depleted marine mammals could not be allowed even if the anticipated take would result in only negligible impacts. On September 29, 1989, NOAA Fisheries and the U.S. Fish and Wildlife Service, Department of the Interior, jointly published general regulations implementing the 1988 amendments. Among other things, the amendments revised the scope of the regulations, the definition of negligible impact, and added a new definition for unmitigable adverse impact.

A proposed rule that would allow an incidental take of marine mammals was published October 3, 1989, with a comment period that was extended to January 31, 1990. A public hearing was held in Barrow, Alaska, on November 10, 1989, and in Washington, DC on January 16, 1990. NMFS prepared an Environmental Assessment on this action and found that there would be no significant impact on populations of marine mammals, and there would be no unmitigable adverse impacts on the availability of the species for subsistence by Alaska natives. A copy of the Environmental Assessment is available on request from the address below. Also, a biological opinion under Section 7 of the Endangered Species Act (ESA) was prepared on this Federal Action, and the Arctic Region Biological Opinion prepared by NMFS in 1988 for MMS was amended to allow an

incidental take of gray and bowhead whales. Both are available from the address below.

**Summary of Request**

The request for a take of bowhead and gray whales, which are depleted species, was received February 16, 1988, from a group of oil companies: Amoco Production Co., Inc.; Chevron U.S.A., Inc.; Exxon Co. U.S.A.; Shell Western E&P Inc.; Unocal Corp.; and Western Geophysical Co. of America. ARCO Alaska, Inc. joined the group of petitioners in January 1990. In February 1989, the petitioners amended their request to include a take of four additional species; the beluga whale, bearded seal, ringed seal and spotted seal, none of which are depleted.

The petitioners describe the request for taking as incidental and unintentional harassment of marine mammals during pre-lease and post-lease exploration for oil and gas resources in Alaska State waters and on the Outer Continental Shelf. They requested a take by harassment. The MMPA defines "take" as harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill any marine mammal (50 CFR 216.3).

A take was requested incidental to exploration activities that would include geological and geophysical surveys, drilling of stratigraphic test wells, exploratory drilling for oil and gas, and associated support activities. Potential causes of taking are noise, oil spills and physical obstruction.

**Summary of Final Rule**

The final rule authorizes an incidental non-lethal take of six species of marine mammals in the Beaufort and Chukchi Seas from 1990-1995 by individuals who are conducting pre-lease and post-lease oil and gas exploratory activities. These species are the bowhead whale, gray whale, beluga whale, bearded seal, ringed seal, and spotted seal. A taking will not be allowed when bowhead whales are using the spring lead system to migrate through the Chukchi Sea and the Beaufort Sea past Pt. Barrow. The rule includes requirements for monitoring and reporting and measures to effect the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. All activities must be conducted in a manner that minimizes adverse effects on the species and their habitat.

Individuals who wish to engage in these activities must apply separately for a Letter of Authorization for each activity at least 90 days before the

activity is to begin. The rule requires those who request a Letter of Authorization to submit a plan to monitor the effects on the populations of marine mammals that are present during exploratory activities. The plan and the person or persons designated to observe and record the effects of exploration activities must be approved by NMFS. Also, the applicant must submit a plan of cooperation that identifies what measures have been and will be taken to minimize any adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request will be evaluated on the specific activity and the specific location, and each authorization will identify allowable methods or conditions that are specific to that activity and location. A report on all exploratory activities must be submitted to NMFS Fisheries within 90 days after the completed activity. Notice of a request for a Letter of Authorization will be published in the *Federal Register* with a 30-day comment period. Also, notice of issuance of Letters of Authorization will be published in the *Federal Register*. Any substantive modifications of the Letters will be subject to public review unless NMFS determines that an emergency exists which requires immediate action.

**Note:** NMFS will defer until November 1, 1990, the requirement that an application for a Letter of Authorization be filed at least 90 days before an activity is to begin, and also, it will not publish requests in the *Federal Register* with a 30-day comment period. These features are being deferred because publication of this final rule is expected to coincide with the beginning of the 1990 open-water exploration season.

A Letter of Authorization must be requested annually by each group or individual conducting an exploratory activity where there is the likelihood of taking any of the six species of marine mammals considered in this rule. The granting of each Letter will be based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level used to make a finding of negligible impact and a finding of no unmitigable adverse impacts. If the level of activity is more than the industry estimated in its request, such as more support vessels or aircraft, more drilling units, or more miles of geophysical surveys, NMFS will reevaluate its findings to determine if they continue to be appropriate. The individual Letters of Authorization will include monitoring and reporting requirements that are specific to each activity, and any measures that are

necessary for mitigating impacts to subsistence whaling.

#### Discussion of Comments on the Proposed Rule

##### *Negligible Impact*

**Comment:** NMFS cannot make a finding of negligible impact unless the impact is small, unimportant, and of little consequence. Also, even if the likelihood of an occurrence is low, but the potential effects would be significant, NMFS cannot make a finding of negligible impact.

**Response:** Under NMFS' regulatory definition, a finding of negligible impact requires that the impact resulting from the specified activity cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. NMFS believes that the clear congressional intent behind the 1986 amendments was to alter the previous standard for determining negligible impact. Under the 1981 amendments, the taking from the impact had to be "so small, unimportant, or of so little consequence as to warrant little or no attention." However, to capture the intent of the 1986 amendment NMFS adopted the definition set out in the Senate's Section-by-Section Analysis. Also, section 101(a)(5) clearly indicates that some level of adverse effects involving the take of depleted marine mammals can be authorized as long as the impact is negligible. NMFS also believes that, in some cases, a finding of negligible impact may be appropriate if the probability of occurrence is low (i.e., oil spilled from a blowout when an exploratory well is drilled), but the potential effects may be significant. NMFS balanced the probability of occurrence with the potential severity of harm to the species or stock when it determined that the impacts of exploration would be negligible.

##### *Type of Take*

**Comment:** The regulations do not clearly prohibit lethal takes of marine mammals.

**Response:** The regulations clearly state under § 228.34(b) that an incidental take other than by harassment will not be allowed. The incidental take statements attached to both biological opinions do not allow lethal takes. If a lethal take occurs, NMFS has the authority to amend or withdraw the Letter of Authorization or the regulations and/or issue a Notice of Violation.

##### *Level of Activity*

**Comment:** NMFS did not set a sufficient limit on the level and type of activity to be allowed.

**Response:** NMFS does not regulate the amount or kind of energy exploration that takes place offshore Alaska. MMS regulates and permits energy related activities on the OCS. It is NMFS' responsibility to determine the effects of these activities on marine mammals and on the availability of marine mammals for subsistence hunting. NMFS can determine that the activity as presented by the applicant will be negligible; or it can determine that no matter what mitigating measures are taken the impacts will not be negligible. In this case, it is not unlawful to engage in exploration activities, but the operator could be subject to penalties under the MMPA and the ESA for unauthorized takings, and continued exploratory activities could be limited to avoid additional takings. Since the 1960s, energy exploration has taken place in the Arctic Region by operators taking measures to avoid a take of marine mammals. These have included operating when marine mammals are not present, before or after migrations are completed or after subsistence hunting seasons are finished. However, if a take had occurred, the operators would have been in violation of the MMPA and ESA.

Also, if the level of activity NMFS used to make these determinations changes significantly, NMFS would have to review its findings and could amend or withdraw the regulations or Letters of Authorization.

**Comment:** The estimated level of activity, such as how many drill sites, the amount of support vessels, the number of trackline miles covered during seismic exploration, was taken from environmental impact statements issued by MMS on the various Arctic Region OCS Lease Sales and does not represent the actual level of activity that the industry expects to happen now that the lease sales have taken place. The petitioners now believe those estimates were too high for drilling activity, but too low for seismic activity (especially for post-lease sales). During the 5-year period the regulations are in effect, they state that it is possible, but unlikely, that as many as five rigs (three floating and two bottom-founded structures) may operate during the same season in the Arctic. More likely, only two floating drilling units and two bottom-founded units will be operating each of the next five years in the Beaufort and Chukchi Seas. Conversely, the petitioners believe

estimates for seismic exploration were probably too low, and the amount will be a total of 35,000 trackline miles rather than about 17,000 miles. The petitioners attribute the additional miles of surveys to the increased use of a method called "3-D" seismic surveys. After an exploratory well is drilled, an operator may need to conduct further, more detailed seismic exploration to resolve geology or lithology questions. Both shallow hazard surveys and "3-D" surveys involve significantly smaller areas than pre-lease (deep seismic) surveys. However, since each tract is surveyed in greater detail, the number of "line miles" will increase.

*Response:* The petitioners are responsible for submitting information on the level and types of activity that will occur during the time the regulations are in effect. Although the petitioners included the estimate made by MMS in their environmental impact statements, they also estimated what they thought would be a realistic level of activity. NMFS based its determinations on what the industry believed would actually occur in the Arctic Region over the next five years rather than the MMS estimates. At the time the proposed rule was developed, the industry stated that there may be as many as five or as few as two drilling units operating during any single year in the Beaufort Sea. In addition, two drilling units could be operating each year in State waters of the Beaufort. In the Chukchi Sea, they estimated that as many as seven or as few as two drilling units could be operating each year. They estimated that pre-lease and post-lease seismic surveys would cover over 17,000 trackline miles in the Beaufort and Chukchi Seas in the next five years.

In their response to the proposed rule, the petitioners included a new estimate for the level of exploration activity in the Arctic region (see previous response) over the next five years. Although the number of drillsites would be far less, the number of trackline miles during seismic surveys would double. Therefore, NMFS will continue to use the levels estimated in the proposed rulemaking as the basis for its findings. If the petitioners request that NMFS base its findings on this new level of activity, there will be a public notice with opportunity for comment.

#### *Marine Geological Surveys*

*Comment:* Although the petitioners included marine geological surveys as one of the activities to be considered, these activities were not described in the proposed rule, and the effects of the proposed surveys were not assessed.

*Response:* The petitioners did not describe or estimate the level of geological surveys. In response to this comment, the petitioners requested NMFS to include a description of geological surveys and to include them in the activities that would be covered by the regulations. However, NMFS will not include geological surveys in the list of activities included in the regulations until it can assess the effects of these activities on marine mammals and on subsistence users, and until there has been a public notice with an opportunity for comment.

#### *Letters of Authorization*

*Comment:* Is a Letter of Authorization valid for the 5-year period the regulations are in effect, or does it need to be renewed annually? Also, there is no provision for the public to review requests for Letters of Authorization before they are issued by NMFS. The only public notice is when NMFS issues the Letter of Authorization.

*Response:* Issuance of a Letter is based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the regulations. Letters can be withdrawn if NMFS determines that the regulations are not being complied with or if the taking allowed is having, or may have, more than a negligible impact on the species or stocks or an unmitigable adverse impact on the availability of the species or stock for subsistence purposes.

A company must apply for a Letter of Authorization for each activity, and each Letter must be renewed on an annual basis. For example, separate Letters would be required for drilling a well and conducting seismic work. If drilling the well or conducting the seismic work spanned a 2-year period, the company would have to renew the Letter after the first year.

When NMFS issues a Letter of Authorization to an applicant, it will include specific requirements that will lessen the likelihood of harassment. Also, it will include monitoring requirements that are tailored to specific locations and specific activities.

NMFS agrees that, in this case, the public and the native communities should have a chance to comment on applications for a Letter of Authorization. Therefore, NMFS will publish a notice, with opportunity for comment, in the *Federal Register* beginning November 1, 1990. However, since there is usually a limited amount of time between the date a request is submitted and the date the operator plans to work, NMFS will act on the request for a Letter of Authorization in a

timely manner, and will not extend the comment period unless there are compelling circumstances. Also, when a Letter is issued, NMFS will notify the public through the *Federal Register*.

#### *Availability of Marine Mammals for Subsistence*

*Comment:* NMFS must demonstrate that the impacts of offshore exploratory drilling will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses.

*Response:* Two elements must be present for NMFS to determine that there is an unmitigable adverse impact on subsistence uses: First, the impact resulting from the specified activity must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. This standard of determining impact does not require the elimination of adverse impacts, only mitigation sufficient to meet subsistence requirements. However, the 1986 amendments also require that the specific regulations include measures that will ensure the least practicable adverse impact on the availability of marine mammals for subsistence uses, even if the activity will not otherwise have an unmitigable adverse impact.

NMFS believes the impact of energy exploration in the Arctic Region over the next five years will not have an unmitigable adverse impact on subsistence uses. This past year, 1989, was the best fall subsistence hunting season ever reported for bowhead whales. At the time, seismic activity was taking place in the Beaufort Sea 35 miles east of Barter Island and in Camden Bay.

However, companies that are conducting exploratory activities should meet with native communities and develop conditions which satisfy both the operational needs of the activity and the requirements of the subsistence users. When an applicant submits a request for a Letter of Authorization, it must also submit a monitoring plan and a plan of cooperation with the native communities that will be affected by exploratory activities. This means that the Alaska native communities will be

brought into the planning process as early as possible.

#### Mitigation Measures

*Comment:* NMFS must include mitigation measures that ensure the least practicable adverse impact on affected species and subsistence communities.

*Response:* NMFS is requiring each operator who requests a Letter of Authorization to submit a plan of cooperation that states how the operator will work with affected native communities and what will be done to avoid interference with subsistence hunting. NMFS will review this plan to determine if it is sufficient to avoid interference with the availability of marine mammals for subsistence uses. Also, each operator is required to submit a monitoring plan that NMFS also will review to determine if it includes adequate measures to monitor the behavior and effects on the species. In addition, a take will not be allowed when bowhead whales are using the spring lead system in the Chukchi and Beaufort Seas. No takes, other than by harassment, are authorized by this rule. The takes which are not authorized by this rule include to hunt, capture, kill or intentionally harass any marine mammal, or to attempt any of these actions.

#### Displacement of Bowhead Whales and Disturbance of Hunting Grounds

*Comment:* Exploratory activity will likely force bowhead whales to migrate further offshore which will result in an unmitigable adverse impact on subsistence hunters. Displacement is already occurring according to older whalers. Also, the migration of bowhead whales is delayed when exploratory activity is occurring in and near the fall migration routes.

*Response:* The existing data does not indicate that human activities have changed the timing and route of the fall migration of bowhead whales. From records of fall whaling, successful hunting often depends on favorable weather conditions. In years where hunting has not been successful, the records show that whalers could not leave their camps because of bad weather. Or whales were not taken because ice ridges were between the whales and the whalers. However, much can be done to prevent exploration activities from interfering with subsistence hunts if the industry and the native communities continue to communicate with one another and develop mutually acceptable cooperative plans. Also, the results of monitoring activities will be used to

determine if NMFS' findings need to be revised.

#### Scientific Evidence

*Comment:* If data is not sufficient to predict effects on marine mammals, a negligible impact finding cannot be made. NMFS should not issue regulations until scientific research on population status and trends and the effect of noise on communication has been conducted. NMFS or the applicant should determine net annual recruitment rate of bowhead whales; develop and use a model to estimate the time it will take to recover to maximum net productivity level; and design and implement a program to verify that exploration does not significantly affect the time required for the species to recover to optimum sustainable population (OSP).

*Response:* NMFS uses both the MMPA and the ESA standard of "the best available scientific and commercial data" to determine the impacts of activities on marine mammals. Although NMFS would like to have more baseline data on the six species of marine mammals in question and more information on the effects of energy related activities on these species, NMFS based its decision on the best information available including recent research on effects of noise associated with drilling activities on bowhead whales, and the results of research available and considered relevant to the issuance of the Biological Opinions for the Beaufort Sea (Sale 97) and Chukchi Sea (Sale 109).

There is sufficient information to determine that exploration will not have more than a negligible impact on the species and will not have an unmitigable adverse impact on the availability of the species for subsistence (refer to preamble in proposed rule—54 FR 40703 and Environmental Assessment on Proposed Regulations Governing the Taking of Small Numbers of Marine Mammals Incidental to Oil and Gas Exploratory Activities in the Alaskan portion of the Beaufort and Chukchi Seas from 1989–1993). However, continual monitoring is necessary to verify the findings made by NMFS, and if new evidence or data indicates that the impact is more than negligible, NMFS will reassess its findings. Keeping in mind that development and production may follow exploration, and more data will be needed to determine the effects of these activities, MMS continues to sponsor research on the effects of energy related activities on marine mammals. If new information indicates that the effects of activities covered by the regulations

may be more than negligible, NMFS will reevaluate these findings.

#### Oil Spills

*Comment:* Several commenters expressed concern about oil that may be spilled if there is a blowout when an exploratory well is drilled. The predictions made by MMS regarding the probabilities of a blowout were questioned, and the comments stated that if 1 blowout were to occur per 156 wells drilled, the probability of a blowout occurring at one of the 77 wells (the highest estimate made by MMS for OCS Lease Sale 109) would be 39 percent, and therefore, the probability of a blowout occurring is high rather than low as MMS predicts. Also, commenters used the example of the oil spill in Prince William Sound, Alaska, from the tanker Exxon Valdez to discuss concerns about energy development in general, but especially in an environment such as the Arctic Region. Commenters are concerned that the oil industry has not demonstrated it is capable of containing or cleaning up an oil spill in an environment such as offshore Alaska.

*Response:* From a report published by the National Academy Press in 1985, "Oil in the Sea, Inputs, Fates, and Effects," offshore production (which includes exploratory drilling) accounts for only 1.54 percent of the input of petroleum hydrocarbons into the marine environment worldwide; transportation accounts for 45.23 percent; municipal and industrial for 36.31 percent; atmosphere for 9.23 percent; and natural sources for 7.69 percent. When determining the impact of this rulemaking on marine mammals, NMFS needed to consider only the probabilities of spills from exploratory drilling, and two compelling points justify NMFS' decision that exploratory drilling would have a negligible impact on marine mammals and would not have more than an unmitigable impact on subsistence hunting of marine mammals. First, no oil has ever been spilled as the result of a blowout during exploratory drilling on the U.S. outer continental shelf. Second, the probability of a blowout during exploratory drilling is extremely low. An analysis by Martin (1986) is the first statistical analysis devoted to exploratory drilling, and was based on the number of wells drilled from 1971 through 1984. During that time, 31 oil and gas blowouts were reported for 4,824 exploratory wells drilled. He calculated the blowout rate to be 0.64 percent ( $31/4,824 \times 100$ ) with an upper 95 percent confidence level of 0.83 percent. Since no oil had been spilled from these

blowouts, he calculated that the probability of a major oil spill from exploratory drilling is zero percent with a 95 percent confidence level of 0.0004 percent.

MMS calculates the probability of an oil spill and its size based on the volume of oil that may be produced and considers ice and other extreme weather conditions when analyzing its rates for accidental oil spills. Anderson and LaBelle (1989) estimate spill rates (of at least 1,000 barrels or greater) from platforms on the U.S. OCS to be 0.60 percent based on historical trends. This represents a decline of 40 percent since last evaluated in 1983. Platform spills were analyzed based on U.S. OCS experience from 1964 through 1987. Spills occurring on the platform including those from ruptures to storage tanks on the platforms and from barges that were moored at a platform were counted. None of the platform spills occurred during the exploratory phase.

Although the Final Environmental Impact Statement for Lease Sale 109 in the Chukchi Sea suggested that under the highest case assumption, 33 exploratory and 40 delineation wells could be drilled from 1989 through 1996, the oil industry estimated that during the five years these regulations are in effect as few as 20 and no more than 60 wells will be drilled (including both floating and bottom-founded units) in the entire Beaufort Sea and Chukchi Sea OCS lease sale areas. Even this figure is probably high since the petitioners stated in response to the proposed rule that currently there are only three floating drilling units available for use in Arctic conditions, and there are not enough icebreakers available to allow all three units to operate simultaneously. Therefore, it is likely that only two floating drilling units will be operating at the same time in the entire Beaufort and Chukchi Seas. Also, the supply of mobile, bottom-founded units (which operate in limited water depths) is even smaller with only two currently available. Because most bottom-founded units actually operate during the winter season, bottom-founded and floating units would not necessarily be operating at the same time. Rather than 77 wells drilled during the 5-year period of the regulations, the number probably will not exceed twenty-five.

MMS requires companies operating anywhere in the Arctic Region to satisfy operational requirements such as a Critical Operations and Curtailment Plan which describes how the operator will safely and promptly secure the well, disconnect from the wellhead, and move offsite if there are unfavorable operating

conditions, and they must monitor ice, meteorological and oceanographic conditions. This plan must be approved by MMS before the company will be given a permit to drill. Blowout prevention equipment must be installed and tested on each well. All personnel are required to attend and pass the MMS-approved well control training program. MMS inspects all exploratory operations in the Arctic Region to ensure compliance with all regulations, orders, stipulations and conditions of approval of exploration plans, and to see that no unnecessary risks are being taken by operators that would jeopardize the safety of the well or personnel, or increase the potential for blowouts or oil spills. NMFS reviews and comments on contingency plans.

#### *Information From Exxon Valdez Oil Spill*

*Comment:* NMFS should not issue the Final Rule until information collected on the effects on marine mammals as a result of the oil spill in Prince William Sound has been released to the public and until scientists and the public have had a chance to study the reports.

*Response:* NMFS does not anticipate that any information gained from investigating the effects of the oil spill in Prince William Sound will change its findings. Necropsy reports on gray whales that washed ashore on Tugidak Island after the spill were inconclusive regarding the cause of death, and other reports have not been released. However, if new information becomes available from any source indicating that the effects may not be negligible, NMFS will reevaluate its findings.

#### *Noise and Disturbance*

*Comment:* NMFS has not demonstrated that noise and disturbance from exploratory activities will have no more than a negligible impact on bowhead whales.

*Response:* When NMFS states that noise from heavy vessel and aircraft traffic could adversely affect whales, it recognizes the potential for harm if the level of exploratory activity is too high, if exploratory activities are not monitored, and if any adverse effects that are detected are not mitigated. NMFS does not believe that the effects on marine mammals and subsistence uses has to be zero. It does believe that the amount of activity over the next five years will result in a negligible impact on marine mammals.

NMFS does not contradict the commenters' position that bowhead whales and other marine mammals may be harassed by noise from aircraft and vessels. However, the MMPA allows a

take (in this case by harassment) of marine mammals if certain findings are made and certain conditions are met. NMFS believes the level of harassment will not adversely affect the species or stock through effects on annual rates of recruitment or survival.

A review of studies of the reaction of bowhead whales to noises associated with humans demonstrates that the sensitivity of bowheads to these noises varies. Some whales will pass by a drill ship or a seismic vessel at a relatively close range and others show avoidance reactions to even weak industrial sounds. In the results of a study on the Analysis and Ranking of the Acoustic Disturbance Potential of Petroleum Industry Activities and Other Sources of Noise in the Environment of Marine Mammals in Alaska (Malme 1989), baleen whales are believed to have hearing sensitivity characteristics which include the frequency ranges of most of the man-made sources studied. Therefore, there is a high probability of acoustic interaction between baleen whales and most of the sound sources studied (seismic arrays, icebreakers, large ships, dredges, earthquakes and low level aircraft operations). The model predicted that killer whales, harbor porpoise, Dall's porpoise, harbor seals and fur seals would be influenced primarily by the loudest sound sources since their hearing sensitivity does not extend to the low frequency range believed important for baleen whales. The other species studied, the walrus, beluga whale, and Steller sea lion, were all predicted to have medium to low probability of acoustic influence from the sources considered because their optimal hearing sensitivity is at frequencies above the dominant frequencies of most man-made sources of noise. The conclusion states that although these predictions should be useful as hypotheses about some of the species and situations where noise impacts are most and least likely, the application of the models to marine mammals has involved the use of several untested hypotheses.

While the 1987 LGL study reported that one bowhead whale moved in an arc around a drillship maintaining a distance of about 23-27 km from the ship, another study by Wartzog (1989) observed over 180 bowhead whales approaching within 15 to 500 meters of a tagging/tracking vessel. In the LGL (1987) study, other bowhead whales that were observed 15 to 30 km from the drillship apparently did not exhibit responses such as a change in respiration, surfacing and dive cycles. This limited research suggests that

bowhead whales continue their migration while avoiding noise from drilling operations by detouring around drill sites in open water.

The study by Wartzog (1989) involved radio tagging bowhead whales and behavioral observations of whales during playback of industrial noises. The study, which was conducted primarily in Canada, demonstrated that bowhead whales in the Canadian Beaufort respond to vessel noise and activity with minor, short-term or no response.

In the 5-year Canadian Beaufort studies by Richardson et al. (1985), on the responses of bowhead whales to industrial activities, behavioral responses were not apparent beyond 4 km from an active drillship.

The reaction of bowhead whales to aircraft noise is variable. A study by Richardson et al. (1985) considered only fixed-wing aircraft, and most reactions occurred at altitudes less than 1,500 feet. With proper altitude observance, most impacts from aircraft can be avoided.

Subsistence hunters stated that 3 out of 246 bowhead whales landed over the past 11 years are believed to have had propeller marks or other signs of collisions with vessels. However, there is no data on the incidence of collisions, where they occur, or evidence to suggest that they collided with vessels associated with exploration. Monitoring programs will include measures, such as aerial surveys and qualified observers that will enable those conducting exploratory activities to avoid or reduce the likelihood of coming in contact with whales. Most collisions can be avoided if vessel operators take appropriate steps.

#### *Spring Bowhead Whale Migration*

*Comment:* Since NMFS will not allow an incidental take in the spring lead system used by bowhead whales, how will NMFS decide when the whales are no longer using the spring lead system and exploration can begin?

*Response:* Since Barrow, Alaska is the most northeastern community where whaling occurs in the spring and because the spring census of bowhead whales is conducted off Pt. Barrow, NMFS will determine that the bowhead whales are no longer using the spring lead system when they are past the leads off Pt. Barrow and when the spring hunt for bowhead whales in all villages is completed. NMFS will notify the industry and the native communities when it has made this determination.

#### *Geographical Boundaries*

*Comment:* The regulations do not limit sufficiently the geographic locations

where marine mammals may be taken incidentally.

*Response:* Marine mammals may be taken incidental to exploratory activities anywhere offshore in the Beaufort or Chukchi Seas. NMFS assessed the impacts of all exploratory activities throughout the Arctic Region on the U.S. outer continental shelf. More specific locations where exploration will take place, other than tracts that have been offered for leasing, are not known until areas have been surveyed. When NMFS issued its first rule under section 101(a)(5) of the MMPA in 1982 and renewed them in 1987 for a take of ringed seals incidental to seismic activities in the Beaufort Sea from Pt. Barrow to Demarcation Pt., it did not know exactly where in that vast area that seismic activity would occur until individual Letters of Authorization were requested.

By looking at the level of activity for the entire Arctic Region, NMFS has been able to assess more effectively the impacts on marine mammals. Also, since individual operators must request a separate Letter of Authorization that includes a requirement for a specific monitoring plan and a specific plan for cooperation with native communities, NMFS will have the opportunity to review and analyze each activity on its own merit in a more defined geographical area.

#### *Monitoring and Reporting Requirements*

*Comments:* The requirement that holders of Letters of Authorization must conduct a site-specific program to monitor effects is appropriate, but without concurrent programs to monitor survival, recruitment, and status of each of the six species in a comprehensive manner, it will not be possible to judge whether the documented effects resulted in a negligible impact. Monitoring programs should be in place and should be conducted by NMFS, the permittee and/or MMS. Monitoring programs will not be meaningful without baseline data for comparison purposes. The regulations should require scientific study to measure the impact exploration is likely to have on recruitment, reproductive success and behavior of the affected species. Also, monitoring will not ensure that the impacts are negligible or do not have an unmitigable adverse impacts.

*Response:* Monitoring programs will be in place before each activity begins and will enable those conducting exploratory activities to detect the presence of marine mammals and take measures to avoid direct contact with them or to alter their operations if necessary to avoid interference with

their migration. Monitoring by qualified observers is essential to determining these immediate effects. Site-specific monitoring will enable NMFS to assess the behavior of marine mammals in the vicinity of exploratory activities, and can assist in determining whether additional monitoring or mitigation measures are necessary. In some cases, monitoring may involve observing the behavior of marine mammals from varying distances of the activity.

Continued efforts to assess the effects of disturbance on all marine mammals, but especially bowhead whales, are important to assure that the effects of present and future OCS activities do not jeopardize the species. NMFS believes continued monitoring of bowhead whale migrations at exploratory sites is necessary to detect any major disturbances. In the Arctic Region biological opinion, NMFS recommended that MMS and/or the oil companies address research needs and take actions that minimize adverse effects to bowhead whales. MMS was encouraged to continue to sponsor research needed to improve knowledge of the seasonal movements and habitat uses of endangered whales, and of the effects of oil spills, noise, and disturbance. NMFS identified possible areas of continued research, and recommended that exploratory operations be monitored using appropriate survey techniques to determine the movement and activity of whales near the drill sites, and whale migration and other habitat uses such as feeding. Each year's monitoring and research should be conducted so that it is comparable with previous years. At the end of the season, all data should be reviewed, and a decision made by NMS and NMFS as to the need and kind of further research. Monitoring will help NMFS to determine whether the effects continue to be negligible and whether the activities are having more than an unmitigable adverse impact.

#### *Number of Animals Taken*

*Comment:* The regulations do not limit the numbers of marine mammals that may be taken by harassment.

*Response:* Since the regulations implementing the 1986 amendments to section 101(a)(5) of the MMPA define "small numbers" to mean "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock" (50 CFR part 228), and because NMFS is authorizing only nonlethal taking, it does not believe that the actual number of animals taken needs to be estimated.

### Section 7 Consultations—Biological Opinions

*Comment:* NMFS must prepare its biological opinion before the comment period is closed; it cannot rely on the previously issued Arctic Opinion, and it must consult with the Alaska Eskimo Whaling Commission (AEWC) while developing these opinions in accordance with the NOAA Cooperative Agreement.

*Response:* NMFS issued a biological opinion in November 1988 which covers exploration on the outer continental shelf in the entire Arctic Region (Beaufort Sea, Chukchi Sea and Hope Basin). This was an update of opinions issued by NMFS on Lease Sales since 1980. Because NMFS has satisfied the requirements of section 7 of the Endangered Species Act by issuing regulations to allow an incidental take of depleted marine mammals under section 101(a)(5) of the Marine Mammal Protection Act, it has issued an incidental take statement which will be attached to the Arctic Region opinion and which will allow an incidental take of gray and bowhead whales.

Also, NMFS has issued a separate biological opinion on the specific regulations. NMFS does not agree that it is required under the NOAA Cooperative Agreement to consult with the Alaska native communities on biological opinions before they are signed by the Assistant Administrator for Fisheries. Opinions are available for review and comment after public distribution. The native communities in Alaska have been kept informed of the proposed rule from the time the request was submitted by the petitioners, and opportunities, from extending comment periods and holding a public hearing in Barrow, Alaska, have been made for the native communities to be involved in the decision-making process on this rule. The biological opinion prepared by NMFS on the specific regulations does not include any information that was not available in the Arctic Region Opinion, the proposed rule and the environmental assessment.

### International Whaling Commission

*Comment:* The IWC will lower the bowhead quota for the Alaskan whaling villages out of its concern for the health of the species as a result of increased offshore exploratory activities authorized by NMFS and MMS.

*Response:* In 1989, an *ad hoc* working group of the IWC Scientific Committee that included scientists from the AEWC submitted a report on the effects of oil spills on cetaceans. The Committee recommended that data on oil spills and their effects be acquired in a timely

manner and be made available to provide documentation of the effects of oil spills on wildlife and to allow for appropriate rescue and rehabilitation programs for cetaceans. No recommendations were made regarding any need to revise the IWC's conservation regime to account for offshore exploratory activities.

Consequently, the IWC has never discussed lowering any whale quotas, including the bowheads, because of its concern about the effects of oil spills on cetaceans. Therefore, NOAA does not anticipate any action by the IWC that would in any way affect the quota because of energy exploration particularly since these regulations only authorize non-lethal incidental takings of whales. In addition, it is not the issuance of the incidental take regulations that creates any potential adverse effects on whales, but rather the MMS permits to conduct exploratory activities. Since the IWC has not responded to the issuance of permits by MMS, it is unlikely that these incidental take regulations will result in IWC restrictions on bowhead quotas.

### Optimum Sustainable Population (OSP)

*Comment:* NMFS must publish a statement of the expected impact of the proposed regulations on the OSP of each species concerned.

*Response:* An OSP determination is not required to make a negligible impact finding. Section 101(a)(5)(C)(ii) of the MMPA clearly exempts the issuance of specific regulations from compliance with the formal rulemaking requirements of sections 103 and 104. NMFS will make qualitative judgments on a case-by-case basis on how the anticipated incidental taking will affect the status and population trends of the species or stocks concerned. NMFS uses many factors in making determinations including the status of the species or stock relative to OSP (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable or unknown, the size and distribution of the population, and existing impacts and environmental conditions.

### Environmental Assessment or Environmental Impact Statement

*Comment:* NMFS should prepare an environmental impact statement rather than an environmental assessment before it issues a final rule.

*Response:* Since NMFS must analyze a request for specific regulations to determine whether the proposed activity has only a negligible impact on a species or stock and does not have an unmitigable adverse impact on

subsistence users, it believes that the issuance of specific regulations allowing an incidental take normally only requires the preparation of an environmental assessment (EA) and not an environmental impact statement. In this case, the agency found through preparing an EA that the proposed action will not significantly affect the quality of the human environment thus making "a finding of no significant impact." If the EA results in this finding, no additional documents are required by the National Environmental Policy Act (NOAA Directives Manual 02-10).

### Regulatory Flexibility Analysis

*Comment:* NMFS must prepare a Regulatory Flexibility Analysis that includes the economic impact on Alaska Eskimo whalers since they have been defined as a "small business."

*Response:* The economic impact of the regulations directly affects the exploration industry since individual operators must request and receive a Letter of Authorization before they are allowed to take marine mammals incidental to their operations. Letters require the operators to monitor their activities, to cooperate with affected native communities and to report on their activities. The impact of exploration activities on the economy of Native communities is addressed appropriately in environmental impact statements prepared by MMS on Lease Sales in the Arctic Region. NMFS' regulations make no requirements on the Alaska whalers, and there is no indication that these regulations, by themselves, will cause a significant economic impact on the whalers.

### Classification

NOAA Fisheries prepared an environmental assessment for this rulemaking and concluded that there would be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment may be obtained at the address listed above.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The rule is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) a significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities since only oil and gas exploration companies, which usually do not qualify as small businesses, would be required to apply for Letters of Authorization to conduct their business. There is no evidence that any of the small business entities, including native whalers, would be subject to a significant economic impact by these regulations. Therefore, a regulatory flexibility analysis was not prepared.

This rule contains collection of information requirements subject to the Paperwork Reduction Act. In anticipation of this rule, additional requirements were approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act issued under OMB Control Number 0648-0151. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service and OMB (see ADDRESSES).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

NMFS determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program under the Coastal Zone Management Act (CZMA). This rule does not authorize oil exploration activities for which a consistency determination may be required. Rather, the rule authorizes the non-lethal taking of marine mammals incidental to such activities. This determination was submitted to the State of Alaska's Division of Governmental Coordination for review under § 3.7 of the CZMA. The State concurs with NMFS that the proposed rule-making is consistent with its Coastal Zone Management Plan. However, the State's position is that Letters of Authorization must be treated as a Federally permitted activity and each applicant for an authorization must certify that the proposed activity is

consistent. NMFS believes that if the State concurs that this rulemaking is consistent, no other consistency certification by individual applicants is necessary.

#### References

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Dated: July 12, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR part 228 is amended as follows:

#### PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 228 continues to read as follows:

16 U.S.C. 1371(a)(5).

2. Subpart D is added to read as follows:

##### Subpart D—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 228.31 Specified activity and specified geographical region.

§ 228.32 Effective dates.

§ 228.33 Permissible methods of taking.

§ 228.34 Prohibitions.

§ 228.35 Level of activity.

§ 228.36 Measures to ensure availability of species for subsistence.

§ 228.37 Requirements for monitoring and reporting.

§ 228.38 Letters of authorization.

##### § 228.31 Specified activity and specified geographical region.

Regulations in this subpart authorize only the non-lethal incidental taking of bowhead, gray, and beluga whales and bearded, ringed, and spotted seals by U.S. citizens engaged in oil and gas exploration in the Chukchi Sea or Beaufort Sea off the coast of Alaska. The geographical region includes Alaska state waters and outer continental shelf waters that have been leased for exploration or that are being considered for leasing. The activities include geophysical surveys and exploratory drilling and support operations (e.g. ice-breakers, supply vessels and aircraft).

##### § 228.32 Effective dates.

Regulations in this subpart are effective for a 5-year period, and Letters of Authorization must be renewed annually. A take of marine mammals is not authorized each spring until the bowhead whale has completed its migration through the spring lead system in the Chukchi Sea and Beaufort Sea. This period is about from mid-April through early June. Each year, the National Marine Fisheries Service will determine when the bowhead whale has completed its migration through the spring lead system, and will notify the exploration companies and the native communities when it has made this determination.

**§ 228.33 Permissible methods of taking.**

(a) The incidental, but not intentional, non-lethal taking of marine mammals is permitted by U.S. citizens under a Letter of Authorization issued pursuant to § 228.38 for the following activities other than when bowhead whales are using the spring lead system:

(1) Geophysical surveys including shallow hazard and acoustic surveys and

(2) Exploratory drilling including ice-breakers, support vessels and aircraft.

(b) The activities identified in § 228.33(a) must be conducted in a manner that minimizes to the greatest extent possible any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

**§ 228.34 Prohibitions.**

Notwithstanding takings authorized by § 228.33 or by a Letter of Authorization issued under § 228.38, the following activities are unlawful:

(a) The take of any marine mammal in the spring lead system used by bowhead whales in the Chukchi Sea and Beaufort Sea (See § 228.32);

(b) The incidental take of a marine mammal other than by unintentional, non-lethal harassment; or

(c) The violation or the failure to comply with the terms, conditions and requirements of these regulations or a Letter of Authorization.

(d) The incidental taking of any marine mammal not specified in these regulations or by a Letter of Authorization.

**§ 228.35 Level of activity.**

When Letters of Authorization are requested each year, the National Marine Fisheries Service will determine whether the level of activity identified in the requests exceeds that considered by the National Marine Fisheries Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is higher, the National Marine Fisheries Service will reevaluate its findings to determine if those findings continue to be appropriate based on the higher level of activity. Depending on the results of the evaluation, the National Marine Fisheries Service may, after notice and opportunity for public comment, deny the request for a Letter of Authorization, or add conditions or mitigating measures that would make the impact negligible.

**§ 228.36 Measures to ensure availability of species for subsistence.**

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies what measures have been taken and will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed exploratory activities and to resolve potential conflicts regarding siting, timing, and methods of operation;

(b) A description of what measures the applicant has taken and will take to ensure that exploratory activities will not interfere with subsistence whaling; and

(c) What plans the applicant has to continue to meet with the affected communities up to and during the exploratory operations to resolve conflicts and to notify the communities of any changes in the operation.

**§ 228.37 Requirements for monitoring and reporting.**

(a) Holders of Letters of Authorization and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration on marine mammals. The Holder must notify the National Marine Fisheries Service, Alaska Region, of any activities specified in § 228.33 or any other activity that may involve a potential take at least 30 days prior to the activity in order to satisfy § 228.37(d).

(b) Holders of Letters of Authorization must designate a qualified biologist or another appropriately experienced individual to observe and record the effects of exploration activities on marine mammals. The observer must be approved by the National Marine Fisheries Service.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects on populations of marine mammals that are present during exploratory activities. This plan, which must be approved by the National Marine Fisheries Service, should identify what survey techniques will be used to determine the movement and activity of marine mammals near the exploratory sites including migration and other habitat uses, such as feeding. A qualified biologist or another appropriately experienced individual

must observe the behavior of the marine mammals present to determine if they are being affected. The monitoring program should document the acoustical effects on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans may vary depending on the activity, the location, and the time.

(d) At its discretion, the National Marine Fisheries Service may place an observer on board drillships, aircraft, etc. to monitor the impact of exploration activities on marine mammals.

(e) The holder of a Letter of Authorization must submit a report to the Assistant Administrator for Fisheries within 90 days of the completion of any exploratory activities. This report must include the following information:

(1) Dates and types of activity;

(2) Dates and locations of any activities related to monitoring the effects of exploration on marine mammals; and

(3) Results of the monitoring activities including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

(f) Results of behavioral, feeding, or population studies must be made available to the National Marine Fisheries Service before applying for a Letter of Authorization for the following year.

**§ 228.38 Letters of Authorization.**

(a)(1) To obtain authorization for an incidental take of marine mammals pursuant to these regulations, each company conducting an exploratory activity in the geographical area described in § 228.31 must apply for a Letter of Authorization for each geophysical survey or seismic activity and each drilling operation.

(2) The application must be submitted to the National Marine Fisheries Service at least 90 days before the activity is scheduled to begin. The National Marine Fisheries Service will publish notices of each request for a Letter of Authorization in the Federal Register with an opportunity for public comment.

(b) An application for a Letter of Authorization must include the following:

(1) A plan to monitor the behavior and the effects of the activity on marine mammals;

(2) A plan of cooperation which describes the measures that have been and will be taken to minimize any

potential conflicts between the proposed activity and subsistence hunting; and

(3) A description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity.

(c) The National Marine Fisheries Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to that activity and location.

(d) Any substantive modifications of the Letters of Authorization will be made only after notice and opportunity for public comment.

(e) Substantive modifications of the Letters of Authorization can be made without opportunity for public comment as provided in § 228.38(c) if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(f) The Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of marine mammals.

[FR Doc. 90-16714 Filed 7-17-90; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 674

[Docket No. 900790-0190]

### High Seas Salmon Fishery Off Alaska

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

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce announces the commercial salmon fishing periods in the Exclusive Economic Zone (EEZ) off Southeast Alaska for 1990. The Secretary notes that the Pacific Salmon Commission has established a base harvest limit of 302,000 chinook salmon for all commercial and recreational fisheries in Southeast Alaska in 1990. This action by the Secretary is necessary to establish the opening of the commercial troll fishery for 1990 and is intended to fulfill United States international commitments under the Pacific Salmon Treaty.

**EFFECTIVE DATE:** Effective 0001 hours, July 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Aven M. Andersen (Fishery Management Biologist, Alaska Region, NMFS), 907-586-7228.

## SUPPLEMENTARY INFORMATION:

### Background

The Pacific Salmon Treaty (Treaty) was signed in 1985 by the United States and Canada. The Treaty governs Pacific Salmon stocks which originate in U.S. and Canadian waters and that are subject to interception by the other party and affect the management or biology of stocks of the other party. The Treaty governs most of the salmon stocks covered by the Fishery Management Plan for the High Seas Salmon Fisheries off the coast of Alaska east of 175 Degrees east Longitude (FMP). The North Pacific Fishery Management Council (Council) must ensure that the FMP is consistent with the Treaty. The Treaty also requires Canada and the United States to establish and enforce regulations to implement provisions of the Treaty, particularly regarding transboundary river resources, specific fisheries for chinook and coho, and a general obligation to prevent increased interceptions.

Section 7(a) of Public Law 99-5, the Pacific Salmon Treaty Act of 1985, 16 U.S.C. section 3631 *et seq.*, requires the Secretary of Commerce (Secretary) to issue conforming amendatory regulations applicable to the U.S. EEZ to carry out U.S. international obligations under the Treaty. This final rule amends the regulations at 50 CFR part 674 to adopt fishing seasons and catch limitations for 1990 that, in conjunction with similar measures adopted by the State of Alaska (State) for its waters, will ensure that the high-seas salmon fishery is conducted in a manner that fulfills our international obligations under the Treaty.

### Quotas for Chinook Salmon

The Pacific Salmon Commission (Commission), under provisions of the Treaty that established it, set the 1990 chinook salmon quotas at its meeting in April 1990. For all salmon fisheries in Southeast Alaska, the Commission set the harvest quota at 302,000 chinook salmon from the base stocks; this number is 39,000 greater than the Commission's harvest quota last year for the base stocks. The base stocks are those wild and hatchery stocks that were being harvested in this fishery when the Treaty was signed.

In addition, the Commission authorized Alaska to augment the harvest quota for base stocks with a supplemental harvest of chinook salmon produced by Alaska hatcheries that are in excess of those included in the base stocks. The exact amount of this supplemental harvest will be calculated

during the fishing season using procedures approved by the Commission. The current pre-season estimate of the supplemental harvest is 17,310 chinook; consequently, the total allowable harvest is predicted to be about 319,310 chinook.

### Chinook Harvest Guidelines for the Troll Fishery

Because the chinook harvest occurs principally within the State waters, the Council defers to the Alaska Board of Fisheries (Board) on allocation decisions. The Board held a telephone conference in late May 1990. Although the Board considered several proposals for the chinook salmon fisheries, it retained the existing harvest guidelines for chinook for the commercial net and sport salmon fisheries in Southeast Alaska and increased the harvest guidelines for the troll fisheries. Therefore, of the 302,000 chinook harvest quota for the base stocks, the harvest guidelines are as follows: sport—22,000; net (seine, drift gillnet, set gillnet, and trap)—20,000; troll—260,000.

The Board did not allocate the estimated supplemental harvest of 17,310 chinook, which is in addition to the Commission's harvest quota for the base stocks, but each fishery will be allowed to catch as many of those supplemental chinook as it can until the Commission's harvest quota for the base stocks is reached. The Board expects the troll fishery to harvest about 14,900 of the estimated total number of supplemental fish (17,310). The exact number of the supplemental chinook salmon that each fishery harvests will be determined, as the season progresses, from the recovery of coded-wire tags from the Alaska hatchery fish; these supplemental fish will be excluded from the calculation used in determining when the harvest quota for base stocks is reached.

As indicated above, the Board established the 1989-1990 harvest guideline for the chinook troll fishery at 260,000 fish from the base stocks and 14,900 fish from the supplemental fish, giving a total harvest guideline of 274,900 for the chinook troll fishery. The winter fishery in State waters (October 1, 1989-April 14, 1990) harvested about 33,000 chinook. Subtracting this winter harvest from the total troll harvest guidelines of 274,900 fish, leaves about 241,900 fish for the remainder of the 1990 troll fishery.

According to the Alaska Department of Fish and Game, the experimental June troll fishery in State waters is expected to harvest 25,000 to 33,000 chinook. Therefore, between 206,900 and 216,900

chinook are expected to remain for the summer troll fishery (i.e., harvest guideline of 274,900 less winter fishery catch of 33,000 less estimated June experimental fishery catch of 25,000 to 33,000 leaves between 206,900 to 216,000 fish). The remaining number of chinook left for the summer fishery applies to all commercial trolling in the marine waters of Southeast Alaska and the EEZ; there is no separate allocation for the troll fishery in the EEZ.

#### The Summer Troll Fishery Season

The Board set July 1 as the opening date of the summer commercial troll fishing season for chinook and other species of salmon. The fishing period for chinook salmon will be closed when the chinook quota has been harvested. The summer commercial troll fishing season for species of salmon other than chinook closes at midnight September 20.

The Board intended that the chinook troll fishery be managed so that there is a single summer troll fishing period for chinook salmon. Fishing periods are scheduled to avoid, as much as practicable, nonretainable incidental catches of chinook during fisheries for other species. Chinook that are caught and released suffer a mortality of about 20 to 25 percent. That is, about one out of every four chinook caught by trollers and released will die from wounds or being handled. Managers attempt to reduce the chances of chinook being caught when they cannot be retained. Thus, after the troll share of the chinook quota has been harvested, chinook retention in the troll fishery will be prohibited while fishing for the other salmon species (coho, sockeye, pink, and chum). Also, in the past 7 years, the Secretary and the State have prohibited trolling in several outer coastal areas in State waters and a small area in the EEZ where chinook are known to concentrate. These closures may be necessary again.

Depending on the size of the coho run and the speed at which the coho move from the offshore waters into the inside waters and spawning rounds, the Secretary and the State may close the troll fishery to the harvest of all salmon species for about 10 days between mid-July and mid-August in order to protect coho.

#### Fishing Periods

Unless modified later, the fishing periods (Alaska Daylight Time) for the commercial troll fishery in the EEZ off Southeast Alaska are as follows:

#### Chinook Salmon

From 0001 hours on July 1, 1990, until the chinook harvest guideline is reached (probably about July 20).

#### All Salmon Species Except Chinook

From 0001 hours on July 1, 1990, until 2400 hours on September 20, 1990.

After the fishing season begins, the Secretary may issue notices to modify these fishing periods on the basis of contingencies which include the following:

(1) The troll fishery for all species of salmon may be closed for about 10 days between mid-July and mid-August unless an evaluation of Southeast Alaska coho salmon shows their abundance to be well above average and that they are making good progress on their inshore migrations. This possible closure is designed to (a) Stabilize or reduce the proportion of coho harvested in the offshore and coastal fisheries, (b) allow adequate harvest by the fisheries in the marine and fresh waters inshore of the surfline of Southeast Alaska as described in 5 Alaska Administrative Code 33.312(b), and (c) allow adequate numbers of coho to escape the fisheries and reach the spawning grounds.

(2) The fishery for chinook salmon may be reopened for a short time after it has been closed if (a) Harvest statistics reveal that the fishery was closed before the chinook base quota established by the Treaty was reached, (b) estimated chinook remaining for the fishery and predicted harvest rates will allow the fishery to be reopened for more than 12 hours without exceeding the harvest quota for the base stocks, and (c) the reopening of the fishery in the EEZ is compatible with a reopening of the fishery in Alaskan waters.

(3) If management actions need to be taken to reduce the hooking mortality of chinook salmon caught incidentally during the fishery for other salmon species, or to restrict the harvest of chinook to an incidental harvest, several outer coastal areas in State waters and a small area of the EEZ known to have high concentrations of chinook may be closed as they have been in recent past years.

#### Other Matters

A provision of the Pacific Salmon Treaty (Annex IV, chapter 3) requires each nation to submit the plans it has developed for managing its salmon fisheries to the other nation before the start of the salmon fishing season. The United States and Canada will have exchanged all their fishing plans before the start of the salmon fishing season.

Copies of this notice have been provided to the North Pacific Fishery Management Council, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard for review and consultation as required by section 7(a) of the Pacific Salmon Treaty Act.

#### Classification

Under section 7(a) of the Pacific Salmon Treaty Act, this action is exempt from sections 4 through 8 of the Administrative Procedure Act (5 U.S.C. sections 553 to 557), the Regulatory Flexibility Act, and the National Environmental Policy Act. It is exempt from Executive Order 12291 because it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

The Director of the NMFS Alaska Region has 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 the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment.

#### List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fisheries, Fishing, International organizations.

Dated: July 13, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

For the reasons set forth above, 50 CFR part 674 is amended as follows:

#### PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

1. The authority citation for part 674 continues to read as follows:

Authority: 16 U.S.C. 3631 *et seq.*, 16 U.S.C. 1801 *et seq.*

2. In § 674.21, paragraph (a)(2) is revised to read as follows:

#### § 674.21 Time and area limitations.

(a) \* \* \*

(2) *East area.* Fishing periods in 1990 (Alaska Daylight Time) are as follows:

(i) Chinook salmon—0001 hours on July 1 until the commercial troll fleet reaches its summer troll fishery harvest guideline of 206,900 to 216,900 chinook.



# Proposed Rules

Federal Register

Vol. 55, No. 138

Wednesday, July 18, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of Administration

#### 5 CFR Part 2502

#### Freedom of Information Act of 1986; Fee Schedule; Fee Waiver Policy; and Miscellaneous Amendments

**AGENCY:** Office of Administration, Executive Office of the President.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement certain provisions of the Freedom of Information Act (FOIA) of 1986 (Pub. L. 99-570) regarding fees and fee waivers. Under the terms of the Freedom of Information Reform Act of 1986, the Office of Administration is required to promulgate for public notice and comment a proposed new schedule of fees to be charged in its processing of requests for records under the Freedom of Information Act. As required by that Act, the Office of Administration has developed these proposed regulations pursuant to and in conformity with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB) in the Federal Register on March 27, 1987. In addition, certain minor amendments are being made to the published procedures for the internal handling of FOIA requests which conform to organizational and administrative changes within the Office of Administration. Finally, a similar change is being made for administrative purposes to subpart B.

**DATES:** Comments must be received on or before August 17, 1990.

**ADDRESSES:** Send comments to the Office of the General Counsel, Office of Administration, 725 17th Street NW, room 472, Old Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Kelly, General Counsel, (202) 395-2273.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 amended the Freedom of Information Act (5 U.S.C. 552) by adding new provisions relating to the charging and waiving of fees. That Act specifically charged OMB to develop and issue a schedule of fees and guidelines for use by Federal agencies in devising their individual fee rules. A final rule on fee schedules and guidelines was published on March 27, 1987 (52 FR 10012).

By this notice, the Office of Administration is proposing amendments to 5 CFR part 2502 to reflect the general guidance issued to the agencies on March 27, 1987.

#### List of Subjects in 5 CFR Part 2502

Courts, Freedom of information.  
Robert W. Kelly,  
General Counsel.

For the reasons set forth in the preamble, it is proposed to amend 5 CFR part 2502 as follows:

#### PART 2502—[AMENDED]

1. The authority citation for part 2502 is revised to read as follows:

**Authority:** 5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 99-570.

#### §§ 2502.3, 2502.4, and 2502.10 [Amended]

2. In 5 CFR part 2502 remove the address for the Office of Administration as follows, "726 Jackson Place NW." and add in its place, this address as follows, "725 17th Street NW." in the following places:

- a. Section 2502.3(b).
  - b. Section 2502.4(a).
  - c. Section 2502.10(a).
3. Section 2502.3(a) is revised to read as follows:

#### § 2502.3 Organization and functions.

(a) The Office of Administration (OA) was created by Reorganization Plan No. 1 of 1977 and Executive Order 12028. Its primary function is to provide common administrative and support services for the various agencies and offices of the Executive Office of the President. It consists of:

- (1) Office of the Director
- (2) Office of the Deputy Director
- (3) Office of the Executive Secretary
- (4) Office of the General Counsel
- (5) Six Directors and their staffs, who are responsible for the following divisions:

- (i) Administrative Operations
  - (ii) Facilities Management
  - (iii) Financial Management
  - (iv) Information Resources Management
  - (v) Library and Information Services
  - (vi) Personnel Management
- \* \* \* \* \*

#### § 2502.4 [Amended]

4. In § 2502.4(a) remove the words "Executive Office of the President Information Center," and add in their place the words, "The Executive Office of the President Library, New Executive Office Building".

5. Section 2502.6 (a) and (e) are revised to read as follows:

#### § 2502.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Office of Administration, 725 17th Street NW., Washington, DC 20503. The words "FOIA REQUEST" should be clearly marked on both the letter and the envelope. Due to security measures at the Old and New Executive Office Buildings, requests made in person should be delivered to room G-1, at the above address.

(e) Upon receipt of the FOIA request, the FOIA Officer will make an initial determination of which officials and offices may be involved in the search and reviewing procedures. The FOIA Officer will circulate the request to all offices so identified and any others the FOIA Officer later determines should be notified.

#### § 2502.7 [Amended]

6. In § 2502.7 remove the words "Deputy Director" and add in their place the words, "General Counsel".

#### § 2502.9 [Amended]

7. Section 2502.9 is amended by redesignating paragraph (b)(4) as paragraph (b)(5) and by adding a new paragraph (b)(4). Newly redesignated paragraph (b)(5) is amended by removing the word "Director" and by adding in its place the words "Deputy Director".

#### § 2502.9 Responses—form and content.

\* \* \* \* \*

(b) \* \* \*

(4) A statement that no agency records are responsive to the request.

§ 2502.10 [Amended]

8. In 5 CFR 2502.10 remove the word "Director" wherever it appears and add in its place, the words "Deputy Director".

9. A centered heading is added preceding § 2502.11 and §§ 2502.11 through 2502.13 are revised to read as follows:

**Charges for Search and Reproduction**

§ 2502.11 Definitions.

For the purpose of these regulations:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS) to set the level of fees for particular types of agencies in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return overdue revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term "direct costs" means those expenditures that OA incurs in searching for and duplicating (and in the case of commercial requestors, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. OA employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requestor. For example, employees should not engage in a line-by-line search when merely duplicating an entire document would prove the least expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable (e.g. magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by the requestors.

(f) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requestor or the person on whose behalf the request is made. In determining whether the requestor properly belongs in this category, OA must determine the use to which a requestor will put the documents requested. Moreover, where an OA employee has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education,

an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis (as that term is referenced in paragraph (g) of this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(j) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase and subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "free lance" journalists, they may be regarded as working for a news organization, if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but OA may also look to the past publication record of a requestor in making this determination.

§ 2502.12 Fees to be charged—general.

OA should charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in § 2502.11(b)), such as the NTIS, OA should inform requestors of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* OA will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* OA will charge at the actual direct cost of providing this service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requestors who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time OA analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of \$.15 per page. For copies prepared by computer such as tapes or printouts, OA shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, OA will charge the actual direct costs of producing the document(s). If OA estimates that duplication charges are likely to exceed \$25.00, it shall notify the requestor of the estimated amount of fees, unless the requestor has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requestor the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* OA will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(f) Remittances shall be in the form of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the FOIA Officer, Office of Administration, 725 17th Street, NW., Washington, DC 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid

for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requestors seeking documents for a commercial use, OA will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, OA will not charge fees to any requestor, including commercial use requestors, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining whether the "cost of collecting a fee" are the administrative costs of receiving and recording a requestor's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word "pages" refers to copies of "8½ x 11" or "11 x 14." Thus, requestors are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does not meet the terms of the restriction.

(3) Similarly, the term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, OA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of a search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, OA will begin assessing charges for a computer search.

#### § 2502.13 Fees to be charged categories of requestors.

There are four categories of FOIA requestors: Commercial use requestors, educational and non-commercial scientific institutions; representatives of the news media; and all other requestors. The specific levels of fees for each of these categories are:

(a) *Commercial use requestors.* When OA receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requestors must reasonably describe the records sought. Commercial use requestors are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OA may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 2502.14).

(b) *Educational and non-commercial scientific institution requestors.* OA shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an education institution) or scientific (if the request is from a non-commercial scientific institution) research. Requestors must reasonably describe the records sought.

(c) *Requestors who are representatives of the news media.* OA shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requestor must meet the criteria in § 2502.11(j), and his or her request must not be made for commercial use. In reference to this class of requestor, a request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use. Requestors must reasonably describe the records sought.

(d) *All other requestors.* OA shall charge requestors who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing the records that are responsive to the request, except that the first 100 pages and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requestors filed in OA's system of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requestors must reasonably describe the records sought.

#### §§ 2502.14 through 2502.17 [Redesignated as §§ 2502.16 through 2502.19]

10. Sections 2502.14 through 2502.17 are redesignated as § 2502.16 through 2502.19, respectively.

11. New sections 2502.14 and 2502.15 are added to read as follows:

#### § 2502.14 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OA may begin assessing interest on an unpaid bill starting on the 31st day of the month following the date on which billing was sent. The fact that the fee has been received by OA within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the

rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of billing.

(b) *Charges for an unsuccessful search.* OA may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OA estimates that search charges are likely to exceed \$25.00, it shall notify the requestor of the estimated amount of fees, unless the requestor has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requestor the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating results.* A requestor may not file multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When OA reasonably believes that a requestor, or on rare occasions, a group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, OA may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* OA may not require a requestor to make an advance payment, i.e., payment before work is commenced or continued on a request unless:

(i) OA estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250.00. Then, OA will notify the requestor of the likely cost and obtain satisfactory assurance of full payment where the requestor has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requestors with no history of payment; or

(2) A requestor has previously failed to pay a fee charged in a timely fashion (i.e., within thirty days of the date of the billing). OA may require the requestor to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has in fact paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request, or a pending request from that requestor.

When OA acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., ten working days from receipt of initial request and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OA has received fee payments described above.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* OA should comply with the provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

#### § 2502.15 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requestor.

12. Newly redesignated § 2502.16 is amended by revising paragraph (b)(2)(i)(C) to read as follows:

#### § 2502.16 Information to be disclosed.

- \* \* \* \* \*
- (b) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(C) OA will withhold all cost data submitted except the total estimated cost for each year of the contract. Where appropriate, OA will release unit pricing data except where that information would disclose confidential information such as profit margins. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

#### §§ 2502.31, 2502.32, and 2502.33 [Amended]

13. In §§ 2502.31, 2502.32, and 2502.33 remove the word "Director" wherever it

appears and in its place add the words "Deputy Director".

[FR Doc. 90-16688 Filed 7-17-90; 8:45 am]

BILLING CODE 3115-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 90-AGL-12]

#### Proposed Transition Area Establishment; Caldwell, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish the Caldwell, OH, transition area to accommodate a new VOR/DME-A instrument approach procedure to Noble County Airport, Caldwell, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

**DATES:** Comments must be received on or before August 21, 1990.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 90-AGL-12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ACL-12." The postcard will be date/time stamped and returned to the commenters. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Caldwell, OH.

The transition area is being established to accommodate a new VOR/DME-A instrument approach procedure to Noble County Airport. The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled

airspace. The minimum descent altitude for this procedure 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. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) 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:

#### Caldwell, OH [New]

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Noble County Airport (lat. 39° 48'03" N., long. 81° 32'11" W), excluding that portion which overlies the Cambridge, OH, transition area.

Issued in Des Plaines, Illinois, on July 9, 1990.

Teddy W. Burcham,

Manager Air Traffic Division.

[FR Doc. 90-16763 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 876

[Docket No. 88N-0244]

#### General and Plastic Surgery Devices; Effective Date of the Requirement for Premarket Approval of Silicone Gel-Filled Breast Prosthesis; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule, extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period for the proposed rule requiring the submission of a premarket approval application (PMA) for the silicone gel-filled breast prosthesis. Because of several requests FDA is extending the comment period for 60 days to assure adequate time for preparation of comments.

**DATES:** FDA is extending the comment period until September 14, 1990.

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

**FOR FURTHER INFORMATION CONTACT:** Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of May 17, 1990 (55 FR 20568), FDA published a proposed rule requiring the submission of a PMA for the silicone gel-filled breast prosthesis. Interested persons were invited to submit comments by July 16, 1990.

FDA received several requests for an extension of the comment period. Mentor Corp., a manufacturer of breast prostheses, requested a 120-day extension of the comment period. This request was based on the fact that there would be insufficient time provided for all of the clinical issues, the literature, medical opinions, and particularly the psychometric testing issues. Other concerns included not having sufficient time to evaluate the medical need for clinical data requirements stated in the proposed rule and whether the clinical requirements could reasonably be accomplished within the time period before PMA's are due.

Counsel to McGhan Medical requested a 120-day extension in order

to gather and analyze information available in the literature and elsewhere.

Dow Corning Wright requested a 90-day extension stating that in the proposal FDA issued a broad list of health concerns and also included a list of 128 literature references which need to be obtained and reviewed. Dow Corning Wright feels that it would be impossible to meet the comment period because adequate review of the proposal is needed and the 60-day period would not allow enough time for the preparation of comments.

Surgitek requested a 90-day extension stating that the 60-day period would be insufficient to research, assess, and develop meaningful comments for the proposed regulation.

FDA is extending the comment period for 60 days to assure adequate time for preparation of comments. Accordingly, FDA finds under section 520(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(d)) that there is good cause for such an extension. FDA believes that an extension of more than 60 days is unnecessary.

Interested persons may, on or before September 14, 1990, 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.

Dated: July 13, 1990.

Ronald G. Chesebrough,  
Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-16787 Filed 7-13-90; 3:52 pm]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[IA-258-84]

RIN 1545-AH32

#### Economic Performance Requirement; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the requirement that economic performance occur in order for an amount to be incurred by a taxpayer using an accrual method of accounting.

**DATES:** The public hearing will be held on Monday, October 22, 1990, beginning at 10 a.m. Outlines of oral comments must be received by Friday, October 5, 1990.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Building Auditorium, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-258-84) room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Angela Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 461(h) of the Internal Revenue Code of 1986 (Code). Section 461(h) was added to the Code by section 91(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 598). The proposed regulations appeared in the *Federal Register* for Thursday, June 7, 1990, at page 23235 (55 FR 23235).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, October 5, 1990, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-16686 Filed 7-17-90; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

[Docket Nos. S-41 and S-057]

RIN 1218-AB04 and RIN 1218-AA48

#### Walking and Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rule; notice of informal public hearing; extension of written comment period.

**SUMMARY:** This notice schedules an informal public hearing, starting on September 11, 1990, concerning the notices of proposed rulemaking which OSHA issued on April 10, 1990 regarding walking and working surfaces (55 FR 13360) and personal protective equipment (fall protection systems) (55 FR 13423).

**DATES:** The informal public hearing will begin at 9:30 a.m. on the first day and at 9 a.m. on any succeeding day. A tentative schedule of appearances will be prepared and distributed to parties who have submitted notices of intention to appear, so parties will know when issues which concern them are likely to be raised at the hearing.

Notices of intention to appear at the informal public hearing must be postmarked by August 8, 1990. Testimony and all evidence which will be offered into the hearing record must be postmarked by August 22, 1990. Written comments on the proposed standard must be postmarked by August 22, 1990.

**ADDRESSES:** Four copies of the notice of intention to appear, testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumers Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615.

Written comments must be submitted, in quadruplicate, to the Docket Officer, Docket Numbers S-041 and S-057, room N2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-7894.

The location of the informal public hearing is 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 F. 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 April 10, 1990, OSHA published Notices of Proposed Rulemaking (NPRMs) which proposed to revise the requirements for walking and working surfaces in subpart D of 29 CFR part 1910 (55 FR 13360) and to add criteria for personal fall protection systems in subpart I of 29 CFR part 1910 (55 FR 13423). The NPRMs set a period, which ended on July 9, 1990, during which interested persons could comment on the proposal and request a hearing. OSHA is extending the written comment period in this notice, because the Agency has determined that it is appropriate to allow additional opportunity for submission of suggestions and information pertinent to the proposed rules. OSHA has received several requests for the convening of an informal public hearing (Exs. 3-1, 3-16). The Agency has determined that those comments and hearing requests raise issues and concerns which should be addressed through an informal public hearing. Therefore, pursuant to section 6(b)(3) of the OSH Act, OSHA has scheduled an informal public hearing, to begin on September 11, 1990, in Washington, DC. Through this hearing, the Agency expects to obtain testimony and other information pertinent to the issues which are raised in the hearing requests, in the notices of intention to appear, and at OSHA's initiative. In particular, OSHA solicits testimony, with supporting information, regarding the issues raised in the NPRMs (55 FR 13362-65 (subpart D) and 55 FR 13430

(subpart I)) and on the issues presented below.

**Issue # 1: Application of Qualified Climber Concept to Outdoor Advertising Industry and Use of Rest Lanyards by Qualified Climbers**

A. Under proposed § 1910.23(a)(2), employers whose fixed ladders are climbed only by "qualified climbers," as provided by § 1910.32(b)(5), are exempt from the proposed requirements for either ladder safety devices, cages or wells if the installation and maintenance of such systems would be greater hazard than using qualified climber and if the ladder is climbed two or fewer times a year. In Issue 12 of the NPRM (for subpart D (55 FR 13364) OSHA asked for information and comments regarding the suggestion, received from representatives of the outdoor advertising industry, that OSHA revise the qualified climber provision to allow as many as 12 climbs on billboard ladders. OSHA has received information which indicates that compliance with the existing requirements for cages and wells provides only a rest position, not fall protection, for employees climbing fixed ladders. In addition, the outdoor advertising industry has stated that it would be inappropriate to require the installation of ladder safety devices on billboard ladders (which involve combined use of fixed and portable ladders), because the installation and maintenance of equipment on a ladder that will be climbed 12 times a year was considered more dangerous and burdensome than the use of qualified climbers. The industry representative also stated that connecting to ladder safety devices while making the transition from a portable ladder to a fixed ladder would be difficult and dangerous. It has been suggested, in a variance application by a billboard company (55 FR 26796, June 29, 1990) that employers have only qualified climbers climb billboard ladders. The qualified climbers would be equipped with short lanyards, approximately 18-inches long, to be used as a rest lanyards. These measures would be taken in lieu of providing cages, wells or ladder safety devices for climbs up to 50 feet of fixed ladder length, but not over 65 feet above grade. OSHA notes that a short rest lanyard could protect both employees climbing under the terms of the variance application and employees making the transition from a portable ladder to a fixed ladder equipped with a ladder safety device where the billboard ladder was not covered by the terms of the variance application.

Should OSHA revise proposed § 1910.32(b)(5) to increase the number of

times a structure can be climbed by a qualified climber? At what point would the number of climbs on a single fixed ladder in a year justify a requirement for the installation of a fall protection system on that ladder? Should the Agency, as an alternatives, set separate requirements for the billboard industry based on the terms of the above-described variance application? Would compliance with the criteria set out in the variance application adequately protect employees from fall hazards? Should OSHA set criteria for climbs on billboard ladders other than those presented in the variance application? For example, should OSHA set the height thresholds for use of ladder safety devices on billboard ladders lower than 50 feet of fixed ladder length or 65 feet above level grade (whichever is lower)? Agency is also interested in receiving information on the overall cost and benefits of the options discussed above. In addition, OSHA requests input on any experience (including accidents) with the use of cages, wells, or ladders safety devices on billboard ladders.

Based on the variance application and related information, OSHA may require that rest lanyards worn by employees climbing billboard ladders be 18-inches long. Would lanyards of some other length provide adequate protection? Are appropriate lanyards readily available? How much do they cost? What criteria should OSHA set for the use, maintenance and replacement of rest lanyard systems? What experience have employees had with rest lanyards on billboard ladders or on other ladders?

What other requirements should OSHA set to protect employees working on billboards from fall hazards? Are there other work locations similar to billboards which should be regulated through this rulemaking? OSHA solicits testimony, with supporting information, on these questions.

B. Also, proposed § 1910.32(b)(5) did not require the use of rest lanyards by qualified climbers. Should OSHA revise the proposed paragraph to require that all qualified climbers wear and, where appropriate, use rest lanyards, based on the concerns raised above? The Agency solicits testimony, with supporting information, on this question.

**Issue #2: Fall Protection for Window Washers**

Employees who descend from roofs to wash windows utilize a variety of single-point suspension scaffolds, such as boatswain's chairs and descent control devices, where the structure does not have powered platforms installed for building maintenance. Both

the existing (§ 1910.28(j)) and proposed (§ 1910.30(g)) standards address boatswain's chairs. However, the existing and proposed standards for walking and working surfaces do not specifically address descent control devices. In the absence of such coverage, OSHA generally enforces compliance with section 5(a)(1) of the OSH Act, applying the available information, including consensus standards, to determine what recognized hazards must be abated and what means are appropriate to protect employees from those hazards. In this case, the only applicable consensus standard, ANSI A39.1c-1990, Safety Requirements for Window Cleaning, explicitly prohibits the use of emergency descent equipment (equipment which is operational in the down direction only) for window cleaning (paragraph 11.3). The Agency has interpreted that provision to cover descent control devices. However, OSHA would not automatically cite an employer for using descent control devices. There would be no citation if the Agency determined that the employer had taken the measures, such as those for training, equipment inspection, rigging, personal fall protection system and installation of anchorages (including a separate anchorage for the attachment of the personal fall protection system) to eliminate fall hazards. OSHA notes that, according to some estimates, descent control devices are used in 60 percent of all window cleaning operations.

The Agency is considering if it should use the subpart D rulemaking to promulgate regulatory language that explicitly addresses the use of descent control devices. Should OSHA prohibit the use of descent control equipment? Should OSHA set criteria for the use of that equipment? OSHA has received information on the proper assembly, installation, operation and maintenance of such equipment. In particular, the following provisions have been recommended:

- Seatboard (which is equivalent to a boatswain's chair) must sustain minimum load of 250 pounds;
- All rope or webbing must be synthetic fiber with rated minimum strength of 5,000 pounds;
- Employees shall wear body belts or harnesses attached to an independent safety line while on a seatboard;
- Each line shall be connected to its own independent anchorage point;
- The system must use two ropes around the descent control device (so employee will not fall if a line fails);
- All lines must be free of knots;

- Employees who use descent control equipment must be trained in use of the system, and
- Equipment must be inspected by a competent person at least every 30 days, with damaged or deteriorated materials removed from service;
- Building features must be capable of supporting applied loads;
- All lines which are in proximity to edges must be protected from cutting and abrasion; and
- The descent control system shall be stabilized to prevent employees swaying and swinging, when the system is used on buildings more than 75 feet in height.

Are these measures appropriate? What other requirements or criteria should OSHA set for use of descent control systems? For example, should OSHA require separate anchorages for the three lines suggested above? What experience, including accidents, have employees had using descent control systems? Would any accidents have been prevented through compliance with the above-suggested requirements? Should OSHA require two lines running through the descent control device? What would be the costs, benefits and problems associated with such a requirement? What kind of stabilization measures have been or would be used with descent control systems? In particular, what measures would be used for employee to move from one level to another? Should OSHA limit the height at which descent control devices are used? What are the costs, benefits and hazards associated with the use of those systems? OSHA solicits testimony, with supporting information, on these questions.

#### Issue # 3 Fall Protection and Falling Object Protection for Employees Working in Proximity to Automobile Service Pits and Floor Openings

A. Under proposed § 1910.32(b)(1), employers are not required to provide fall protection that complies with proposed § 1910.28 for repair pits or assembly pits, so long as employers allow only authorized and trained employees within six feet of a pit and use floor markings and/or stanchion systems (as in proposed § 1910.28(d), designated areas) and caution signs to notify employees that they are approaching a fall hazard. As noted in the preamble (55 FR 13388), OSHA proposed this provision because the Agency anticipated that fall protection would unreasonably interfere with work and would, in any event not be needed when the vehicles to be repaired or assembled was over the pit.

OSHA has received information (Ex. 3-31), however, which indicates that the

service pits at some quick oil change/lube facilities (lubritorium) may not be completely covered during vehicle servicing. Exhibits (Exs. 3-19 and 3-20) indicated that some facilities eliminate the fall hazard by installing pit covers. The Agency was considering locomotives and busses, not automobiles, when proposing paragraph (b)(1). In addition industry representatives have indicated that a separate section in proposed § 1910.32(b) should be addressed to cover quick change/lube facilities:

Therefore, OSHA has determined that the proposed paragraph does not apply to quick oil change/lube operations. The Agency has received input from representatives of the lubritorium industry [Ex. 3-31] which states that the regulation of such facilities should be modeled on that in proposed § 1910.32(b)(1).

Therefore, the Agency is considering how best to protect employees in quick oil change/lube facilities from fall hazards. Should OSHA apply the provisions of proposed § 1910.32(b)(1)? Would the combination of training, floor markings or stanchion systems and signs provide adequate protection? The Agency has received information [Ex. 3-31] which indicates that quick oil change operations have very few fall-related accidents associated with pits and that pit cover systems are difficult to operate and counter productive. OSHA has also learned that the Maryland Occupational Safety and Health Administration (MOSHA) has granted a variance from the pertinent pit cover requirement to a particular Maryland-based quick oil change/lube company due to concern for the difficulties experienced in using certain types of floor opening covers. As noted above, other lubritorium have installed covers over their service pits in the belief that training or other measures do not provide adequate protection from fall hazards. Based on the information described above, OSHA solicits testimony, with supporting information, regarding the following questions:

- What fall protection measures, such as use of covers or training and warnings, have been implemented by this industry?
- What are the costs of those fall protection measures? To what extent are those measures generally accepted or readily available?
- What has been the experience with implementation of those measures? What are the particular benefits and problems associated with those approaches to fall protection?
- To what extent would the emphasis on speedy service, which characterizes

lubritorium operations, negate a fall protection program based on training, floor markings and signs?

- What are the typical dimensions of quick oil change/lube pits?

- To what extent do the vehicles being serviced cover the pits?

- Would it be feasible to cover any floor opening not covered by the vehicle being serviced with strong lightweight grating which can easily be inserted or removed by the employee in the pit, as necessary?

B. In addition, OSHA has been informed that the toeboards of lubritorium service pits are lower than the minimum three and one-half-inch height required in proposed § 1910.28(b)(7). It has been explained that toeboards higher than two-and one-half inches would interfere with the movement of certain cars through the service bays. Also, information from the industry indicates that installing toeboards at the ends of the vehicle pit would interfere unreasonably with work being performed by the employee down in the pit. It has been suggested that any possible reduction in the protection of employees from falling object due to the absence or low height of toeboards around the floor openings, is more than offset by the generally accepted industry practice of sloping the floor away from the edges of the opening.

Should OSHA recognize the protection afforded by a sloped floor (and, at some points on perimeter, the absence of a toeboard or a toeboard no higher than two-and-a-half inches) as equivalent to the protection provided by a three and a half-inch toeboard? In particular, is there an appropriate minimum or maximum slope for the floor near the opening? OSHA notes that, typically, the employees in the pit have their heads above level of the surrounding floor and, therefore, may not need as much protection from falling objects. OSHA solicits testimony, with supporting information, regarding these questions.

c. Also, OSHA has learned that some vehicle repair pits, particularly those for busses, are constructed as trenches, extending the length of the service area. OSHA was not aware of this situation when proposed paragraph (b)(1) was drafted. The Agency is considering if such operations should be regulated under proposed § 1910.32(b)(1). Should OSHA anticipate that employees would be exposed to fall hazards unless there are pit covers over any portions of the trench not covered by vehicles being serviced? What are the costs and benefits of measures taken to protect employees working in or near trenches from fall or falling object hazards? What

experience, such as number and severity of accidents, has there been with systems used to protect employees working in proximity to service trenches? The Agency notes that service trenches are generally accessed via stairways or fixed ladders at the sides of the trenches. What measures have been or could be taken to protect employees from fall or falling object hazards without obstructing access to and from the trench? OSHA solicits testimony, with supporting information regarding these concerns.

#### **Issue #4 Installation of Toeboards (29 CFR 1910.27(b)(6))**

Under proposed § 1910.27(b)(6), employers are required to install an appropriate guard, such as a toeboard which complies with § 1910.28(b)(7), on the perimeter of a walking and working surface, when employees working below that surface might be exposed to falling material. OSHA is concerned that the proposed language could be viewed as a change from existing § 1910.23(c)(1), insofar as the proposal deletes the requirements for toeboards where there is moving machinery or equipment with which falling materials could cause a hazard beneath the walking or working surface. OSHA's intention in proposing § 1910.27(b)(6) was to clarify the existing requirement, not to change it. OSHA solicits testimony, with supporting information, regarding any circumstances where the protection afforded through compliance with the proposed rule would be different from that provided through compliance with the existing rule.

In addition, OSHA is considering specific guidance as to when the likelihood of exposure to falling objects will trigger the toeboard requirement. The Agency notes that it is often difficult to predict what work activities or materials will be needed in a particular walking or working area. Does the proposed rule adequately address this concern? Should OSHA revise the proposed provision? If so, what changes would necessary? For example, should OSHA revise proposed § 1910.27(b)(6) to require that employers install toeboards unless there is no employee access to the area below? The Agency solicits testimony, with supporting information, regarding these questions.

#### **Issue #5 Fall Protection for Foundry Employees who are Fabricating Molds**

Under proposed § 1910.32(b)(4) employers are not required to install guardrails on the working sides of loading platforms or teeming tables where the employer can demonstrate

that the presence of guardrails would prevent the performance of work. Proposed paragraph (b)(4) does not clearly indicate that, as stated in proposed § 1910.28(a)(1), where the use of a guardrail system is infeasible, the employer shall provide an appropriate alternative means of fall protection which complies with § 1910.28. OSHA notes that the appropriate language already appears in the pertinent portion of the Summary and Explanation (55 FR 13400). Therefore, the Agency recognizes that proposed § 1910.32(b)(4) requires clarification so that it clearly reflects proposed § 1910.28(a).

OSHA has received information which indicates that the fabrication of sand molds in foundries raises concerns analogous to those which prompted the Agency to propose paragraph (b)(4). In particular OSHA has been informed that employees are working with sand molds while standing on catwalks over four feet above lower levels. Those catwalks are unguarded, because the employer believes the installation of guardrails would unreasonably interfere with work operations. OSHA's initial response to this situation is to consider whether, consistent with the intent of §§ 1910.28(a) and 1910.32(b)(4), there are alternative means of providing fall protection. For example, could safe anchorage points be identified or created so that employees using body belt or harness systems could tie off while working on the catwalk? What measures have been or could be taken in the foundry industry to protect employees from the above-identified fall hazard? What has been the experience, including the number and severity of accidents, with any measures taken to protect those employees? What are the actual or expected costs of providing that fall protection? To what extent could training, supervision, signs or floor markings protect employees from fall hazards? OSHA solicits testimony, with supporting information, regarding these questions.

#### **Issue #6 Installation of Anchorage Points**

It has been suggested that OSHA require the installation of anchorages on all structures where it is reasonably foreseeable that employees will need anchorage points for the attachment of portable scaffolds, descent control devices, personal fall protection systems, or positioning device systems used for descent from rooftops. To what extent do such structures already have anchorages? Are those anchorages adequate for the intended use? What, if any, criteria should OSHA set for

installation and maintenance of anchorages? Would an anchorage requirement impose a reasonable burden on employers whose employees descend existing structures? Would such a requirement impose a reasonable burden on building owners who may subcontract work? Should the Agency require that anchorages be installed only on structures erected after the effective date of the standard? Should OSHA set a phase-in period, over which time anchorages would be installed on all structures covered by the requirement? OSHA is considering a 30-foot threshold for any anchorage requirement, based on the likelihood that employees will use ladders or other means to reach workplaces or to perform work less than 30 feet from the ground. For example, OSHA is aware of extendable poles which an employee can use for window cleaning up to 30 feet from ground level. Is the 30-foot minimum height reasonable? Would some other height threshold be appropriate? Why? The Agency solicits testimony, with supporting information, on these questions.

#### Public Participation—Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard, including economic and environmental impacts, will be provided at an informal public hearing scheduled to begin at 9:30 a.m. at the place and on the date as follows:

Washington, DC: September 11, 1990.  
The Auditorium, Frances Perkins  
Department of Labor Building, 200  
Constitution Avenue, NW., Washington,  
DC 20210.

#### Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before August 8, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Dockets S-041 and S-057, room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523-8615. A notice of intention to appear also may be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-7894, 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 requested for the presentation;
- (4) The specific issues that will be addressed;
- (5) A statement of the position that will be taken with respect to each issue addressed;
- (6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

#### Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a representative at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by August 22, 1990. That material will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those 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.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. 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.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

#### Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on September 11, 1990. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the

proceeding is informal and legislative in nature. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously, in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposals. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, 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 powers:

- (1) To regulate the course of the proceedings;
- (2) To dispose of procedural requests, objections and comparable matters;
- (3) To confine the presentations 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 the questioning of any witness and to limit the time for questioning; and
- (6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

#### Written Comments

Interested persons are invited to submit written comments on the issues raised in the proposals. Written comments must be postmarked by August 22, 1990, and submitted in quadruplicate to the Docket Office,

Docket Numbers S-041 and S-057, room N-2625, U. S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523-7894, and its hours of operation are 8:15 a.m. to 4:45 p.m. Monday through Friday except Federal holidays. Comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the provisions of the proposals which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceedings.

#### Certification of Record and Final Determination After Hearing

Following the close of the post hearing comment periods, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The proposed standards will be reviewed in light of all testimony and written submissions received as part of the rulemaking records. Standards will be issued based on the entire records of the proceedings, including the written comments and other data received from the public.

#### List of Subjects in 29 CFR Part 1910:

Occupational safety and health, Fall protection systems, Guardrails, Ladders, Protective equipment.

#### Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, 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(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC on this 12th day of July.

Gerard F. Scannell,  
Assistant Secretary of Labor.

[FR Doc. 90-16783 Filed 7-17-90; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 88

[CGD 90-032]

#### Inland Navigation Rules; Annex V; Pilot Rules

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Coast Guard proposes to designate a light signal to identify vessels engaged in official public safety activities. The Coast Guard believes this would enhance navigation safety by making these vessels easier to distinguish from other vessels.

**DATES:** Comments must be received on or before September 17, 1990.

**ADDRESSES:** Comments should be submitted to Commandant (G-LRA-2), Room 3314, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington DC 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry Robertson, Office of Navigation Safety and Waterway Services (G-NRS-3) (202) 267-0357.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 90-032), and the section to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed envelope or postcard is enclosed. The rule 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.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

### Drafting Information

The principal persons involved in the drafting of this proposal are Harry Robertson, Project Manager, Office of Navigation Safety and Waterway Services, and Christena Green, Project Attorney, Office of the Chief Counsel.

### Discussion of Proposed Regulations

The Inland Navigational Rules Act of 1980 (33 U.S.C. 2001-20730) establishes navigation rules that apply to all vessels operating on the inland waters of the United States, and on the Great Lakes to the extent that there is no conflict with Canadian law. Annex V (Pilot Rules) to the Inland Navigation Rules provides for certain lights to be displayed in specific circumstances such as law enforcement vessels, moored barges and dredge pipelines.

For several years the Coast Guard has been considering the addition of a distinctive light for identifying vessels engaged in public safety activities. The Navigation Safety Advisory Council and the National Boating Safety Advisory Council endorse the need for a public safety vessel identification light distinct from any currently authorized lights.

A distinctive light for use during public safety activities will facilitate identification of public safety vessels when waterways are crowded or caution is required. Use of the proposed light would be optional. It is intended neither to interfere with nor to take the place of other required lights.

The Coast Guard proposes to establish an alternately flashing red and yellow light for optional use by public safety vessels engaged in public safety activities. A public safety vessel is a vessel owned by, operated by, or acting with the authority of the United States or a state or a political subdivision of a state. Public safety activities are activities such as patrolling marine parades, regattas, or special water celebrations; firefighting; traffic control; and assisting in search and rescue.

Only vessels that meet both criteria will be allowed to use the red and yellow flashing light, i.e., they must be public safety vessels, and they must be engaged in public safety activity. This rule is not intended to allow recreational or commercial vessels to use the red and yellow light regardless of the type of activity in which they may be engaged.

Section 88.11 of the Pilot Rules allows law enforcement vessels to use a flashing blue light when engaged in direct law enforcement activities, but does not specifically authorize them to use it for public safety activities. Since the blue light is already installed on

most law enforcement vessels it would be simpler to allow these vessels to use the blue light when performing public safety activities than to expect installation of another color light. Therefore, this rule also proposes to amend the Pilot Rules to permit law enforcement vessels to use the flashing blue light when engaged in public safety activities.

#### Regulatory Evaluation

This proposed regulation is non-major under Executive Order 12291 and non-significant under the DOT policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. This proposal does not impose any new economic burdens upon the public. The proposed rulemaking contains no information collection or record keeping requirements. The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

#### Environmental Assessment

Under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been placed in the docket, and is available for inspection or copying where indicated under "ADDRESSES".

#### Federalism

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

#### List of Subjects

##### 33 CFR Part 88

Navigation (water), waterways.

For the reasons stated above, the Coast Guard proposes to amend part 88 of title 33, Code of Federal Regulations as follows:

#### PART 88—[AMENDED]

1. The authority citation for part 88 is revised to read as follows:  
Authority: 33 U.S.C. 2071; 49 CFR 1.46.
2. In § 88.11, paragraph (a) is revised to read as follows:

##### § 88.11 Law Enforcement Vessels.

(a) Law enforcement vessels may display a flashing blue light when engaged in direct law enforcement or

public safety activities. This light shall be located so that it does not interfere with the visibility of the vessel's navigation lights.

\* \* \* \* \*

3. A new § 88.12 is added to read as follows:

##### § 88.12 Public Safety Vessels.

(a) Public safety vessels may display an alternately flashing red and yellow light when engaged in public safety activities. This light shall be located so that it does not interfere with the visibility of the vessel's navigation lights. It is intended to be used only as an identification signal and in itself conveys no special privilege.

(b) A public safety vessel is a vessel owned by, operated by, or acting with the authority of the United States or a state or a political subdivision of a state.

(c) Public safety activities include but are not limited to patrolling marine parades, regattas, or special water celebrations; firefighting; traffic control; and assisting in search and rescue.

Dated: July 11, 1990.

J.W. Lockwood,

*Captain, U.S. Coast Guard, Acting Chief,  
Office of Navigation Safety and Waterway  
Services.*

[FR Doc. 90-16710 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 270

[FRL 3432-1]

#### Hazardous Waste Management System; General and EPA- Administered Permit Programs: The Hazardous Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** On November 17, 1980, the Environmental Protection Agency suspended the applicability of the hazardous waste management facility standards (40 CFR parts 264 and 265) and RCRA permitting requirements (40 CFR part 270) to owners and operators of wastewater treatment units and elementary neutralization units at wastewater treatment facilities subject to regulation under the Clean Water Act. The Agency is today proposing to amend the definition of "wastewater treatment unit" in 40 CFR 260.10 and 270.2 to clarify that except for sludge dryers, thermal treatment units (such as incinerators), are not wastewater

treatment units. Thus, they must meet the requirements of 40 CFR parts 264, 265, and 270.

EPA never intended that thermal treatment units (except for sludge dryers at wastewater treatment facilities) be exempt from the requirements of 40 CFR parts 264, 265, and 270. Rather, specific standards have been developed for these non-exempt devices.

The Agency is also proposing a definition for "sludge dryers" in 40 CFR 260.10 that will clearly distinguish them from incinerators and other types of thermal treatment units.

**DATES:** EPA will accept public comment on this proposed rule until September 17, 1990.

**ADDRESSES:** Comments on this proposed rule should be mailed to U.S. Environmental Protection Agency, EPA RCRA Docket, Office of Solid Waste (OS-305), 401 M Street, SW., Washington, DC 20460. The Agency requests that comments be submitted in triplicate and be marked "Docket Number F-90-WWTP-FFFF."

Comments received by EPA may be inspected at the RCRA Docket in Room 2427 at the address above. Docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

Members of the public may make an appointment to review docket materials by calling (202) 475-9327. Members of the public may copy a maximum of 100 pages from any one regulatory docket at no cost; additional copies are \$0.15 per page.

#### FOR FURTHER INFORMATION CONTACT:

RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. Single copies of this proposed rule can be obtained by calling the Hotline. For technical information, contact William J. Kline (telephone (202) 382-4654), Office of Solid Waste (OS-321), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 17, 1989 (45 FR 76074), EPA suspended the applicability of RCRA permitting requirements (40 CFR part 122, which is now codified as part 270) and hazardous waste management facility standards (40 CFR parts 264 and 265) to owners and operators of devices meeting the definition of "elementary neutralization unit" or "wastewater treatment unit" in 40 CFR 260.10 and 270.2.

## II. Reason and Basis for Amendment

Since promulgation of the wastewater treatment unit exclusion, the Agency has received numerous requests to determine if certain types of units satisfy the definition of "wastewater treatment unit" and, therefore, currently do not require a RCRA permit. Many of these requests have been with regard to the regulatory status of thermal treatment units, and sludge dryers in particular.

In response, the Agency is today proposing to amend the definition of "wastewater treatment unit" to more clearly explain which devices are so classified (and therefore exempt from the requirements of parts 264, 265, and 270). The revised definition will specifically exclude thermal treatment units, with the exception of sludge dryers, from the meaning of wastewater treatment unit. EPA never intended that thermal treatment units (with the exception of sludge dryers) be eligible for exemption from permit requirements under the wastewater treatment unit exclusion. Today's proposed rule would simply clarify this longstanding policy.

The Agency also is proposing to correct any ambiguity in the classification of thermal treatment units by proposing a new definition for "sludge dryer" that clearly distinguishes it from an incinerator.

The current definition of "wastewater treatment unit" contains three components. Wastewater treatment unit, as defined in §§ 260.10 and 270.2, means a device that:

- (1) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act; and
- (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in § 261.3 of this chapter, or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge that is a hazardous waste as defined in § 261.3 of this chapter; and
- (3) Meets the definition of "tank" or "tank system" in § 260.10 of this chapter.

Note: The Agency published final amendments to the hazardous waste tank system regulations on September 2, 1988 (53 FR 34079). Among other changes, the amendments added the term "tank system," along with the term "tank," in the definition of "wastewater treatment unit" found in §§ 260.10 and 270.2.

EPA is today proposing to amend the definition of "wastewater treatment unit" found in §§ 260.10 and 270.2 by adding a fourth component to the

existing definition: (4) Does not use a thermal treatment process, with the exception of a sludge dryer.

The Agency believes this revised definition would more clearly reflect its policy that sludge dryers, but not other types of thermal treatment units, may be exempt from regulation under the wastewater treatment unit exclusion.

The original definition was "intended to include all industrial and municipal wastewater and wastewater sludge treatment and storage tanks that are subject to regulation under the NPDES or pretreatment programs of the Clean Water Act" (45 FR 76077-76078). The preamble to the November 17, 1980, final rule also cited examples of specific device intended to be covered by the definition, including wastewater clarifiers, aeration tanks, grit chambers, and "sludge digesters, thickeners, dryers and other sludge-processing tanks" (45 FR 76078). EPA intended that the suspension only apply to wastewater treatment units that can be adequately defined in a national regulation and for which individually issued RCRA permits are unnecessary.

EPA has received frequent requests as to the regulatory status of sludge dryers. Most of these requests have been from owners and manufacturers of sludge dryers. The Agency believes that approximately 400 sludge dryers are currently being used in the metal finishing industry to dehydrate metal hydroxide sludges (waste code F006) produced in the treatment of wastewater.<sup>1</sup> In response to these inquiries, EPA distributed policy memoranda to the Regional offices explaining that a sludge dryer is included within the scope of the wastewater treatment tank exclusion, provided that it meets the definition of "wastewater treatment unit." (See OSWER Policy Directives 9503.52-1A and 9503.51-1A, available upon request from the RCRA Hotline.)

Despite the original preamble language and the policy clarification, the regulatory status of sludge dryers has been a subject of continuing confusion. One reason for this confusion is because it is debatable whether a sludge dryer satisfies the third component of the definition of wastewater treatment unit (i.e., whether it meets the definition of a "tank" or "tank system"). The Agency has determined that sludge dryers that are integrally equipped with feed or discharge hoppers that contain an accumulation of waste satisfy the

definition of "tank system." Most sludge dryers are so equipped. The Agency has also determined that other unit operations that are not obviously "tanks," such as presses, filters, sumps, and other types of processing equipment, are covered within the meaning of the term when used in the context of this exclusion (see OSWER Policy Directive 9503.52-1A).

Another reason that the regulatory status of sludge dryers has been the subject of many questions may be because some sludge dryers technically meet the current definition of an "incinerator," although EPA never intended to regulate indirect-flame or direct-flame sludge dryers as incinerators. When EPA amended the definition of "incinerator" to use physical design criteria rather than a primary purpose test (i.e., purpose of burning), it clearly did not intend to bring dryers under regulatory control as incinerators. (See 50 FR 625 January 4, 1985, indicating that the revised definition would not bring large numbers of devices under the incinerator standards for the first time.) Under the old primary purpose definition, dryers were not incinerators. Although under the revised definition dryers could be classified as incinerators, this clearly was not EPA's intention. The Agency has attempted to clarify this ambiguity by proposing to regulate all nonexempt sludge dryers (i.e., those not meeting the definition of "wastewater treatment unit" under today's proposal, as discussed below), under the interim status standards of Part 265, Subpart P ("Thermal Treatment"), and the permit standards of Part 264, Subpart X ("Miscell. Units"). See 55 FR 17862 (April 27, 1990 for details. Comments on that proposal should be directed to the docket for that proposal. Today's proposal requests comment only on the change to the wastewater treatment unit definition and the proposed definition of sludge dryer.

Even though sludge dryers are subject to regulation as other thermal treatment units, dryers that meet the § 260.10 definitions of "wastewater treatment unit" and "tank" are exempt wastewater treatment units under §§ 264.1(g)(6) and 265.1(c)(10). The Agency believes that virtually all sludge dryers meet the tank definition and, therefore, would be exempt when used as part of a wastewater treatment system.<sup>2</sup>

<sup>1</sup> Midwest Research Institute. "Summary Report of Sludge Dryer Characterizations." USEPA, Office of Solid Waste. EPA Contract No. 63-01-7287. April 5, 1988.

<sup>2</sup> Because the Agency is concerned that sludge dryers exempted by the "wastewater treatment unit exclusion" pose the same risk as fully regulated

Continued

The term "sludge dryer," as proposed, would mean any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum thermal input (i.e., from wastes and auxiliary fuel) of 1,500 Btu/lb of waste treated on an as-fired (i.e., wet weight) waste basis. This definition is intended to cover both direct- and indirect-flame units. EPA believes that this definition would clearly distinguish dryers from incinerators because incinerators require much higher thermal input—from 3,300 to more than 19,000 Btu/lb of waste treated—to achieve the temperatures necessary to destroy organic compounds to levels required by the incineration destruction and removal efficiency standard. The Agency understands that the thermal input for sludge dryer is invariably less than 1,500 Btu/lb.<sup>3</sup>

The wastewater treatment unit exclusion is not applicable to other thermal treatment units, such as conventional sludge incinerators, that may share some common physical design characteristics with sludge dryers. These units have different purposes. Sludge dryers are used to evaporate water, rather than to destroy or treat the hazardous constituents in the waste. To ensure that incinerators are not intentionally operated under poor combustion conditions to meet the 1,500 Btu/lb of waste maximum heat input criteria and become eligible for the sludge dryer/wastewater treatment unit exemption, the definition would also require the device to be used for the primary purpose of dehydrating sludge.

It was never EPA's intention that thermal treatment units be exempt from subtitle C regulation. Rather, standards have been developed (or, in the case of boilers and furnaces, have been proposed for specific types of thermal treatment devices, such as incinerators (subpart O of parts 264 and 265), boilers, and furnaces (subpart D of part 266), and for other thermal treatment devices (subpart X of part 264, and subpart P of part 265). Even though these devices may meet the "tank" definition, they are not properly considered to be tanks; there would be no reason to have the special standards noted if these devices were already covered by the tank standards of subpart J. Thus, thermal treatment units (other than sludge dryers) that meet the "wastewater treatment unit" definition are not

exempt because they are explicitly regulated under a specific subpart.

The Agency believes this distinction is appropriate because when specific standards are promulgated for a type of facility or device, the Agency makes conscious decisions about which uses of that device should be exempt. As intended, EPA did not provide an explicit exemption for incinerators or other thermal treatment units (other than sludge dryers) that are part of a wastewater treatment system.

Sludge dryers that do not meet the definition of "wastewater treatment unit" must comply with the permit standards for other thermal treatment devices (subpart X of part 264 or subpart P of part 265; 52 FR 46946, December 10, 1987).

The Agency believes that this proposed action will not increase the size of the permitted universe. We are, however, requesting comments regarding additional thermal treatment units that would need to be permitted as a result of this clarification.

The Agency specifically invites comments regarding the proposed addition of sludge dryers to the existing definition of a "wastewater treatment unit." Public comments are not being requested or accepted on other portions of the existing definition.

Comments are also requested on whether it is necessary to specify, in the definition of "sludge dryers," a minimum percent volume reduction of the waste caused by dehydration and, if so, what percent would be appropriate. EPA's concern is that without an objective test, the requirement that dehydration be the primary purpose of drying may be difficult to interpret. This could conceivably allow a waste with minimum moisture content containing toxic volatile compounds (and meeting the definition of "sludge") to be thermally treated in a sludge dryer, thus volatilizing the toxic compounds. Although very little of the waste's volume is likely to be reduced, the concentration of toxic organic compounds could be lowered to levels that would allow the waste to be delisted. A minimum volume reduction requirement due to dehydration could ensure against such possible "sham drying." EPA does not today propose a specific volume reduction standard, but it does solicit comment on this issue.

### III. Regulatory Analysis

#### A. Regulatory Impact Analysis

Under Executive Order 12291 (46 FR 13193, February 9, 1981), a regulatory agency must determine whether a new regulation is "major" and, if so, must

conduct a Regulatory Impact Analysis. A major rule is defined as one that is likely to result in: (1) An annual effect on the economy of \$100 million or more; (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, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's proposed rule is not major because it will have none of the above effects. This rulemaking will simply clarify the definition of "wastewater treatment unit" to more clearly reflect an existing policy, and will not result in any change in the number of regulated units. Therefore, the Agency has not conducted a Regulatory Impact Analysis for today's proposed amendment. This proposed rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

#### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis, which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have an adverse economic impact on small entities, since it will not pose any burden on the regulated community. In fact, the universe of regulated units will not change. The rule is intended to clarify regulatory language to more clearly reflect existing EPA policy. Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a Regulatory Flexibility Analysis.

#### C. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

dryers, it intends to evaluate regulatory alternatives for these units, but not as part of the present proceeding. These alternatives include applying subpart X standards and developing specific RCRA standards for sludge dryers.

<sup>3</sup> Midwest Research Institute, *op.cit.*

**List of Subjects in 40 CFR Parts 260 and 270**

Administrative practices and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Dated: June 20, 1990.

William K. Reilly,  
Administrator.

For the reasons set forth in the Preamble, it is proposed to amend title 40 of the Code of Federal Regulations, parts 260 and 270 as follows:

**PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

40 CFR part 260 is amended as follows:

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938 and 6939.

2. In § 260.10, it is proposed to add the definition of "sludge dryer" and amend the definition of "wastewater treatment unit" by removing the period after paragraph (3) and adding the phrase"; and" after paragraph (3) and a new paragraph (4) to read as follows:

**§ 260.10 Definitions.**

*Sludge dryer* means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input of 1,500 Btu/lb of sludge treated on a wet-weight basis.

*Wastewater treatment unit* means a device that:

(4) Does not use a thermal treatment process, with the exception of a sludge dryer.

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

40 CFR part 270 is amended as follows:

3. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

4. The definition of "wastewater

treatment unit" in § 270.2 is amended by removing the period after paragraph (c) and adding the phrase"; and" after paragraph (c) and a new paragraph (d) to read as follows:

**§ 270.2 Definitions.**

*Wastewater treatment unit* means a device that:

(d) Does not use a thermal treatment process, with the exception of sludge drying.

[FR Doc. 90-16753 Filed 7-17-90; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL EMERGENCY MANAGEMENT AGENCY****44 CFR Part 67**

[Docket No FEMA-6994]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-2767.

**SUPPLEMENTARY INFORMATION:**

The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of

1973 (Pub. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-449)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

**List of Subjects in 44 CFR Part 67**

Flood insurance, Flood plains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<b>GEORGIA</b>	
<b>Habersham County (unincorporated areas)</b>	
<i>Mud Creek:</i>	
Just upstream of Crane Mill Road.....	*1,214
Just downstream of Garrison Road.....	*1,243
Just upstream of Garrison Road.....	*1,249
Just downstream of Duncan Bridge Road.....	*1,273
Just upstream of Duncan Bridge Road.....	*1,279
Just downstream of Old Clarkesville-Athens Road.....	*1,333
Just upstream of Old Clarkesville-Athens Road.....	*1,340
Just downstream of J. Warren Road.....	*1,352
Just upstream of J. Warren Road.....	*1,358
Just downstream of U.S. Route 23.....	*1,378
<i>South Fork Mud Creek:</i>	
At confluence with Mud Creek.....	*1,301
Just downstream of J. Warren Road.....	*1,359
<i>Little Mud Creek:</i>	
Just upstream of Crane Mill Road.....	*1,167
Just downstream of Alto-Mud Creek Road.....	*1,217
Just upstream of Alto-Mud Creek Road.....	*1,232
Just downstream of Duncan Bridge Road.....	*1,266
Just upstream of Duncan Bridge Road.....	*1,272
Just downstream of A. Wilbanks Road.....	*1,305
Just upstream of A. Wilbanks Road.....	*1,318
Just downstream of U.S. Route 23.....	*1,318
Just upstream of U.S. Route 23.....	*1,333
About 4000 feet upstream of Alto Road.....	*1,383
<i>South Fork Little Mud Creek:</i>	
At mouth.....	*1,280
Just downstream of U.S. Route 23.....	*1,294
Just upstream of U.S. Route 23.....	*1,304
At Town of Baldwin corporate limits.....	*1,358
<i>Alto Creek:</i>	
At confluence with Little Mud Creek.....	*1,233
Just downstream of U.S. Route 23.....	*1,238
Just upstream of U.S. Route 23.....	*1,249
About 2100 feet upstream of C. Grant Road.....	*1,287
<i>Hazel Creek:</i>	
About 3400 feet downstream of confluence of Lick Log Creek.....	*1,298
Just downstream of Cody Road.....	*1,350
Just downstream of Dam No. 12.....	*1,355
<i>Camp Creek:</i>	
About 3600 feet downstream of Mize Road.....	*1,318
Just downstream of Dam No. 7.....	*1,358
<i>Lick Log Creek:</i>	
At mouth.....	*1,302
Just downstream of Camp Creek Road.....	*1,352
<i>Law Creek:</i>	
At mouth.....	*1,313
Just downstream of State Route 197.....	*1,327
<i>Little Hazel Creek:</i>	
At mouth.....	*1,323
Just downstream of Dam No. 21.....	*1,368
<i>Cocklebur Creek:</i>	
At mouth.....	*1,329
Just downstream of Dam No. 19.....	*1,347
<i>Soquee River:</i>	
About 1,250 feet downstream of Monore Street.....	*1,300
About 4,200 feet upstream of Bridge Street.....	*1,310
Maps available for inspection at the Planning Office, 8 Courthouse Square, Clarkesville, Georgia.	
Send comments to the Honorable Lewis Canup, County Administrator, Habersham County, P.O. Box 227, Clarkesville, Georgia 30523.	
<b>Lumpkin County (unincorporated areas)</b>	
<i>Yahoola Creek:</i>	
Just upstream of State Route 52.....	*1,217
Just downstream of Remer Gooch Road.....	*1,551
<i>Cane Creek:</i>	
Just downstream of confluence of Crooked Creek.....	*1,179
Just downstream of Oak Grove Road.....	*1,200
Just upstream of Oak Grove Road.....	*1,214
At confluence of Little Cane Creek.....	*1,285
<i>Little Cane Creek:</i>	
At mouth.....	*1,285
Just downstream of Wash Rider Road.....	*1,309
<i>Clay Creek:</i>	
At mouth.....	*1,192

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just downstream of Oak Grove Road.....	*1,308
<i>Ward Creek:</i>	
At mouth.....	*1,218
Just downstream of Cavender Creek Road.....	*1,296
Just upstream of Cavender Creek Road.....	*1,304
About 2,000 feet upstream of Cavender Creek Road.....	*1,309
<i>Left Fork Cavenders Creek:</i>	
About 1,100 feet upstream of mouth.....	*1,298
About 2,450 feet upstream of Cavender Creek Road.....	*1,379
<i>Dowdy Branch:</i>	
At mouth.....	*1,267
Just downstream of Oak Grove Road.....	*1,324
<i>Tributary B:</i>	
At mouth.....	*1,279
Just downstream of Duffie Brizzle Road.....	*1,430
<i>Tributary C:</i>	
At mouth.....	*1,182
About 1,600 feet upstream of Radio Road.....	*1,240
<i>Tributary D:</i>	
At mouth.....	*1,229
Just downstream of Camp Wahsega Road.....	*1,302
<i>Happy Hollow Creek:</i>	
At mouth.....	*1,190
About 500 feet upstream of mouth.....	*1,191
<i>Tributary E:</i>	
At mouth.....	*1,281
Just downstream of Siloam Church Road.....	*1,291
Maps available for inspection at the Planning Office, 290 Courthouse Hill, Dahlonega, Georgia.	
Send comments to the Honorable J.B. Jones, Commissioner, Lumpkin County, 280 Courthouse Hill, Dahlonega, Georgia 30523.	
<b>Mississippi</b>	
<b>Lincoln County (unincorporated areas)</b>	
<i>Halbert Branch:</i>	
Just upstream of U.S. Route 51.....	*412
About 1.35 miles upstream of U.S. Route 84.....	*430
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Brookhaven, Mississippi.	
Send comments to the Honorable J.W. Loving, President, Board of Supervisors, Lincoln County, P.O. Box 555, Brookhaven, Mississippi 39601	
<b>OHIO</b>	
<b>Richland County (unincorporated areas)</b>	
<i>Rocky Fork:</i>	
Just downstream of Interstate 71.....	*1,120
About 0.5 mile upstream of South Illinois Avenue.....	*1,138
<i>Clear Fork Mohican River:</i>	
About 0.6 mile downstream of Bixler Road.....	*1,130
Just downstream of Clear Fork Dam.....	*1,183
<i>Black Fork Mohican River:</i>	
Just upstream of Plymouth-Springmill Road.....	*1,067
About 1,850 feet upstream of Myers Road.....	*1,127
<i>Bear Run:</i>	
At mouth.....	*1,069
Just downstream of Myers Road.....	*1,182
<i>West Branch Bear Run:</i>	
At mouth.....	*1,069
Just downstream of Smiley Road East.....	*1,106
<i>East Branch Bear Run:</i>	
At mouth.....	*1,104
About 300 feet upstream of Plymouth-Springmill Road.....	*1,126
<i>Tuby Run:</i>	
Just upstream of Vernon Road.....	*1,104
About 2,450 feet upstream of Abandoned Railroad.....	*1,121
<i>Upper Tuby Tributary:</i>	
At mouth.....	*1,105
About 4,350 feet upstream of mouth.....	*1,113
<i>Lower Tuby Tributary:</i>	
At mouth.....	*1,107
About 4,450 feet upstream of mouth.....	*1,115
<i>Hartman Bargahaiser Ditch:</i>	
Just upstream of School Lane.....	*1,086
About 600 feet upstream of Schere's Lane.....	*1,099

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 300 feet downstream of South Gamble Street.....	*1,095
About 900 feet upstream of State Route 61.....	*1,113
<i>West Branch Tributary:</i>	
At mouth.....	*1,105
About 3,420 feet upstream of Vernon Road.....	*1,120
<i>Seltzer Park Creek:</i>	
About 1,950 feet downstream of CSX railroad.....	*1,124
About 1.5 miles upstream of CSX railroad.....	*1,139
<i>Seltzer Park Tributary:</i>	
At mouth.....	*1,129
About 1,000 feet downstream of Myers Road.....	*1,154
Maps available for inspection at the County Emergency Management Agency, County Courthouse, 50 Park Avenue, East, Mansfield, Ohio.	
Send comments to The Honorable Edward W. Olson, President, Board of County Commissioners, Richland County, 50 Park Avenue, East, Mansfield, Ohio 44902.	
<b>Ross County (unincorporated areas)</b>	
<i>Paint Creek:</i>	
At mouth.....	*611
About 2.0 miles upstream of confluence of Raiston Run.....	*655
<i>North Fork Paint Creek:</i>	
At mouth.....	*632
Just downstream of Maple Grove Road.....	*683
<i>Scioto River:</i>	
About 0.80 mile downstream of confluence of Paint Creek.....	*610
About 3.3 miles upstream of U.S. Route 35.....	*632
<i>Salt Creek:</i>	
Just upstream of U.S. Route 35.....	*593
Just downstream of CSX railroad.....	*598
<i>Little Salt Creek:</i>	
About 1,000 feet upstream of mouth.....	*587
About 400 feet upstream of southeast county boundary.....	*602
Maps available for inspection at the Planning Commission, County Courthouse, Chillicothe, Ohio.	
Send comments to The Honorable James Caldwell, President, Planning Commission, Ross County, County Courthouse, Chillicothe, Ohio 45601.	
<b>PENNSYLVANIA</b>	
<b>Cromwell (township), Huntingdon County</b>	
<i>Jordan Run:</i>	
At the confluence with Blacklog Creek.....	*619
Approximately 100 feet upstream of confluence.....	*620
<i>Blacklog Creek:</i>	
Approximately 100 feet downstream of confluence of Jordan Run.....	*619
Approximately .4 mile upstream of State Route 994 (Meadow Street).....	*642
Maps available for inspection at the Township Building, Valley Street, Rockhill, Pennsylvania.	
Send comments to The Honorable Gene Myers, Chairman of the Township of Cromwell Board of Supervisors, Huntingdon County, P.O. Box 84, Orbisonia, Pennsylvania 17243.	
<b>Orbisonia (borough), Huntingdon County</b>	
<i>Blacklog Creek:</i>	
Approximately 50 feet west of a point on Abandoned Railroad located approximately 150 feet north of its crossing over Blacklog Creek.....	*624
Approximately 150 feet south of the intersection of Water and Winchester Streets.....	*635
Maps available for inspection at the Borough Hall, Elliot Street, Orbisonia, Pennsylvania.	
Send comments to The Honorable Steven E. Skotic, President of the Orbisonia Borough Council, Huntingdon County, P.O. Box 145, HRC 60, Orbisonia, Pennsylvania 17243.	
<b>SOUTH CAROLINA</b>	
<b>Bamberg County (unincorporated areas)</b>	
<i>Lemon Creek:</i>	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 1,200 feet downstream of State Highway 77	*127	<b>Maps available for inspection at the Town Hall (Old Bank Building), Cairo, West Virginia.</b>		<i>Wilhelm Run:</i>	
Just downstream of confluence of Grapevine Creek	*139	Send comments to The Honorable Patricia Jenkins, Mayor of the Town of Cairo, Ritchie County, P.O. Box 162, Cairo, West Virginia 26337.		At the confluence with Arnold Creek	*794
<i>Grapevine Branch:</i>				At approximately 1.2 miles upstream of the confluence with Arnold Creek	*839
At mouth	*139			<i>Long Run:</i>	
Just downstream of Olar Road	*146			At the confluence with Buckeye Creek	*846
<i>Halfmoon Branch:</i>				At approximately 1.5 miles upstream of CSX Transportation	*916
At mouth	*133			<i>Toms Fork:</i>	
Just downstream of confluence of Halfmoon Branch	*149	<b>Clay County (unincorporated areas)</b>		At the confluence with Meathouse Fork	*828
<i>Halfmoon Tributary:</i>		<i>Elk River:</i>		At the confluence of Little Toms Fork	*844
At mouth	*149	Approximately 400 feet downstream of New Queen Shoals Bridge	*634	<i>Greenbrier Creek:</i>	
About 1.27 miles upstream Barnwell Road	*172	Approximately 300 feet upstream of County Route 13-7	*786	At the confluence with Buckeye Creek	*880
<i>Savannah Creek:</i>		<i>Big Otter Creek:</i>		Approximately 1.9 miles upstream of confluence with Buckeye Creek	*929
At county boundary	*96	At confluence with Elk River	*751	<i>Big Isaac Creek:</i>	
Just downstream of dam	*125	Confluence of Stinsonlick Fork	*867	At the confluence with Meathouse Fork	*942
About 3,250 feet upstream of State Highway 428	*132	<i>Reed Fork:</i>		At the confluence of Little Isaac Creek	*948
<b>Maps available for inspection at the County Office Building, Bamberg, South Carolina.</b>		At confluence with Homer Fork	*787	<i>Laurel Run:</i>	
Send comments to The Honorable Gary Smith, County Administrator, Bamberg County, P.O. Box 149, Bamberg, South Carolina 29003.		3,000 feet (approximately .6 mile) upstream of confluence with Honor Fork	*823	At the confluence with Meathouse Fork	*942
		<i>Summers Fork:</i>		At approximately 0.9 mile upstream from the confluence with Meathouse Fork	*986
<b>Union County (unincorporated areas)</b>		At confluence with Laurel Creek	*777	<b>Maps available for inspection at the County Clerk's office, County Courthouse, 118 East 4th Street, West Union, West Virginia.</b>	
<i>Broad River:</i>		Approximately 2 miles upstream of confluence with Laurel Creek	*868	Send comments to The Honorable Ora Ash, President of the Doddridge County Commission, Doddridge County Courthouse, 118 East 4th Street, West Union, West Virginia 26456.	
About 1.25 miles downstream of confluence of Cocks Creek	*315	<i>Laurel Creek:</i>			
About 1.48 miles upstream of Lockhart Dam	*417	Approximately 700 feet downstream of confluence of Laurel Fork	*752		
<i>Cocks Creek:</i>		At confluence of Valley Fork and Hansford Fork	*838		
At mouth	*319	<i>Valley Fork:</i>			
Just downstream of CSX railroad	*365	At confluence with Laurel Creek	*838		
Just upstream of CSX railroad	*371	Approximately 0.8 mile upstream of confluence with Laurel Creek	*882		
<i>Tributary B:</i>		<i>Homer Fork:</i>			
At mouth	*323	At confluence with Laurel Creek	*764		
Just upstream of CSX railroad	*334	At confluence of Reed Fork	*787		
<i>Canal:</i>		<i>Middle Creek:</i>			
At confluence with Broad River	*366	At confluence with Elk River	*692		
Just downstream of Power Dam	*367	Approximately 1,350 feet upstream of County Route 24-1	*991		
Just upstream of Power Dam	*393	<i>Lick Branch:</i>			
Just downstream of State Route 49	*394	At confluence with Middle Creek	*942		
<b>Maps available for inspection at the County Office Building, Union, South Carolina.</b>		At confluence of Osborne Fork	*1,038		
Send comments to The Honorable E. Bruce Morgan, County Administrator, Union County, P.O. Drawer G, Union, South Carolina 29379.		<b>Maps available for inspection at the County Clerk's Office, County Courthouse, Clay, West Virginia.</b>			
		Send comments to The Honorable Clinton Nichols, President of the Clay County Commission, P.O. Box 190, Clay, West Virginia 25043.			
				<b>Clay (town), Clay County</b>	
				<i>Elk River:</i>	
				At approximately 1,000 feet downstream of County Route 28	*701
				At approximately 600 feet downstream of Bens Run	*711
				<b>Maps available for inspection at the Mayor's Office, Town Hall, Main Street, Clay, West Virginia.</b>	
				Send comments to The Honorable Don Moore, Mayor of the Town of Clay, Clay County, Town Hall, Main Street, Clay, West Virginia 25043.	
				<b>Doddridge County (unincorporated areas)</b>	
				<i>Middle Island Creek:</i>	
				At County boundary	*740
				At the confluence of Meathouse Fork and Buckeye Creek	*793
				<i>Buckeye Creek:</i>	
				At the confluence with Middle Island Creek	*793
				At approximately 240 feet upstream of the confluence of Long Run	*846
				At the confluence of Greenbrier Creek	*880
				At the confluence of Traugh Fork	*950
				<i>Meathouse Fork:</i>	
				At the confluence with Middle Island Creek	*793
				At County Highway 56	*845
				At approximately 1,650 feet downstream of County Highway 25-13	*929
				At the confluence of Laurel Run and Big Isaac Creek	*942
				<i>McElroy Creek:</i>	
				At the confluence of Flint Run	*740
				At the confluence of Big Battle Run and Robinson Fork	*793
				<b>Glilmer County (unincorporated areas)</b>	
				<i>Little Kanawha River:</i>	
				At the downstream county boundary	*716
				At the upstream county boundary	*750
				<i>Leading Creek:</i>	
				Approximately .48 mile downstream of the confluence of Mudlick Run	*755
				At the county boundary	*780
				<i>Stewart Creek:</i>	
				At the confluence with Little Kanawha River	*731
				Approximately 1,050 feet upstream of the confluence of Grassy Run	*750
				<i>Sand Fork:</i>	
				Approximately .63 mile upstream of State Highway 5	*739
				At the confluence of Indian Fork	*754
				<i>Indian Fork:</i>	
				At the confluence with Sand Fork	*754
				At approximately 1,600 feet upstream of the confluence with Sand Fork	*754
				<i>Steer Creek:</i>	
				At confluence of Bear Fork	*715
				At the confluence of Left Fork Steer Creek and Right Fork Steer Creek	*717
				<i>Left Fork Steer Creek:</i>	
				At the confluence with Steer Creek	*717
				At approximately 1,880 feet upstream of the confluence of Eliza Run	*753
				<i>Right Fork Steer Creek:</i>	
				Approximately 100 feet downstream of County Route 23-7	*767
				At the county boundary	*773
				<i>Cedar Creek:</i>	
				Approximately .54 mile downstream of the confluence of Lower Level Run	*785
				Approximately 150 feet upstream of the confluence of Rockcamp Run	*794
				<b>Maps available for inspection at the County Clerk's Office, Gilmer County Courthouse, Glenville, West Virginia.</b>	
				Send comments to The Honorable Larry Chapman, President of the Gilmer County Commission, Gilmer County Courthouse, North Court Street, Glenville, West Virginia 26351.	
				<b>Glenville (city), Gilmer County</b>	
				<i>Little Kanawha River:</i>	
				At downstream corporate limits of the City of Glenville	*728
				At the confluence of Stewart Creek	*731
				<i>Stewart Creek:</i>	
				At the confluence with Little Kanawha River	*731
				At approximately 0.45 mile upstream of State Highway 5	*731

TENNESSEE

Hardeman County (unincorporated areas)

<i>Spring Creek:</i>	
Just upstream of U.S. Route 64	*352
Just downstream of Sain Road	*373
<b>Maps available for inspection at the County Courthouse, Bolivar, Tennessee.</b>	
Send comments to The Honorable Don Clift, County Executive, Hardeman County, P.O. Box 250, Bolivar, Tennessee 38008.	

Tipton County (unincorporated areas)

<i>Hatchel Creek:</i>	
Just upstream of Indian Creek Road	*299
Just downstream of Kenwood Steet	*309
<i>Town Creek:</i>	
Just upstream of Leighs Chapel Road	*273
Just downstream of George Gracey Highway	*305
<i>Mississippi River:</i>	
At downstream county boundary	*237
About 3.85 miles upstream of confluence of Hatchie River	*251
<b>Maps available for inspection at the County Courthouse, Covington, Tennessee.</b>	
Send comments to The Honorable Jeff Huffman, County Executive, Tipton County, P.O. Box 686, Covington, Tennessee 38019.	

WEST VIRGINIA

Cairo (town), Ritchie County

<i>North Fork of Hughes River:</i>	
At downstream corporate limits	*672
Approximately 60 feet upstream of upstream corporate limits	*676

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
<p>Maps available for inspection at the City Hall, 20 North Court Street, Glenville, West Virginia.</p> <p>Send comments to The Honorable Bruce Smith, Mayor of the City of Glenville, Gilmer County, 20 North Court Street, Glenville, West Virginia 26351.</p> <p><b>Sand Fork (town), Gilmer County</b></p> <p><i>Little Kanawha River:</i></p> <p>Approximately 800 feet downstream of the confluence of Sand Fork..... *738</p> <p>Approximately 375 feet downstream of confluence of Lick Run..... *740</p> <p><i>Sand Fork:</i></p> <p>At the confluence with Little Kanawha River..... *739</p> <p>Approximately .63 mile upstream of State Highway 5..... *739</p> <p>Maps available for inspection at the Town of Sand Fork Firehouse, Route 13, Sand Fork, West Virginia.</p> <p>Send comments to The Honorable Carl Carr, Mayor of the Town of Sand Fork, Gilmer County, P.O. Box 173, Glenville, West Virginia 26430.</p> <p><b>Sophia (town), Raleigh County</b></p> <p><i>Soak Creek:</i></p> <p>At downstream corporate limits..... *2,312</p> <p>Approximately 350 feet upstream of White Oak Street..... *2,331</p> <p><i>Soak Creek Tributary No. 1:</i></p> <p>At confluence with Soak Creek..... *2,318</p> <p>Approximately 400 feet upstream of Daniels Street..... *2,324</p> <p>Maps available for inspection at the Town Hall, Sophia, West Virginia.</p>		<p>Send comments to The Honorable Linda Hatfield, Mayor of the Town of Sophia, Raleigh County, P.O. Box 700, Sophia, West Virginia 25821.</p> <p><b>West Union (town), Doddridge County</b></p> <p><i>Middle Island Creek:</i></p> <p>Approximately 2,000 feet downstream from Sistrerville Avenue..... *774</p> <p>At State Route 18..... *777</p> <p>Maps available for inspection at the Town Hall, Columbia Street, West Union, West Virginia.</p> <p>Send comments to The Honorable Owen Mossor, Mayor of the Town of West Union, Doddridge County, P.O. Box 5, West Union, West Virginia 26456.</p> <p><b>WISCONSIN</b></p> <p><b>Kohler (village), Sheboygan County</b></p> <p><i>Sheboygan River:</i></p> <p>Just upstream of U.S. Highway 141..... *588</p> <p>About 1,050 feet upstream of upstream corporate limits..... *630</p> <p>Maps available for inspection at the Village Hall, Kohler, Wisconsin.</p> <p>Send comments to The Honorable Robert H. Biever, Village President, Village of Kohler, Village Hall, 119 Highland Drive, Kohler, Wisconsin 53044.</p> <p><b>Marinette County (unincorporated areas)</b></p> <p><i>Peshtigo River:</i></p> <p>About 2.95 miles upstream of Peshtigo Dam..... *604</p> <p>Just downstream of State Highway 64..... *606</p> <p><i>Menominee River:</i></p> <p>About 300 feet upstream of Upper Dam Scott Paper Company..... *610</p>		<p>About 3.51 miles upstream of Upper Dam Scott Paper Company..... *616</p> <p><i>Green Bay: Within community</i></p> <p>Maps available for inspection at the County Courthouse, 1926 Hall Avenue, Marinette, Wisconsin 54143-03200.</p> <p>Send comments to The Honorable Ted Sauve, Chairman, County Board, Marinette County, 1926 Hall Avenue, P.O. Box 320, Marinette, Wisconsin 54143-0320.</p> <p><b>Sheboygan Falls (city), Sheboygan County</b></p> <p><i>Sheboygan River:</i></p> <p>About 0.88 mile downstream of Monroe Street..... *629</p> <p>Just downstream of Chicago and North Western railroad..... *639</p> <p>Just upstream of Monroe Street..... *656</p> <p>Just downstream of Dam..... *662</p> <p>Just upstream of Dam..... *671</p> <p>About 2.54 mile upstream of Leavens Street..... *679</p> <p><i>Mullet River:</i></p> <p>Just downstream of County Highway PP..... *677</p> <p>About 2.0 miles upstream of Chicago and North Western railroad..... *690</p> <p><i>Orion River:</i></p> <p>At mouth..... *631</p> <p>About 2,000 feet mile upstream of Buffalo Street..... *693</p> <p>Maps available for inspection at the City Hall, 375 Buffalo Street, Sheboygan Falls, Wisconsin.</p> <p>Send comments to The Honorable Richard M. Micolczyk, Mayor, City of Sheboygan Falls, Wisconsin 53085.</p>	

3. The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Village of Bald Head Island, Brunswick County.	Atlantic Ocean.....	About 1300 feet north of the intersection of Federal Road and Unnamed Road. Along southern shoreline.....	*9 *16	*9 *19
<p>Maps available for inspection at the Village Hall, Bald Head Island, North Carolina. Send comments to The Honorable Wallace Martin, Village Manager, Village of Bald Head Island, P.O. Drawer 10085, Southport, North Carolina 28461.</p>					
North Carolina	Unincorporated Areas of Brunswick County.	Atlantic Ocean/Intracoastal Waterway.	About 2400 feet west of Snows Point..... Within Tubbs Inlet.....	*10 *16	*10 *23
<p>Maps available for inspection at the County Planning Office, County Complex, Bolivia, North Carolina. Send comments to The Honorable David Clegg, Interim County Manager, Brunswick County, P.O. Box 249, Bolivia, North Carolina 28422.</p>					
North Carolina	Town of Caswell Beach, Brunswick County.	Atlantic Ocean/Intracoastal Waterway.	Just west of the southern end of the CP&L Discharge Canal. About 400 feet south of the southeastern end of the CP&L Discharge Canal.	*12 *17	*12 *22
<p>Maps available for inspection at the Town Hall, Caswell Beach, North Carolina. Send comments to The Honorable Jack Cook, Mayor, Town of Caswell Beach, P.O. Box 460, Caswell Beach, North Carolina 28461.</p>					
North Carolina	Town of Holden Beach, Brunswick County.	Atlantic Ocean/Intracoastal Waterway.	About 1000 feet north of the intersection of Ocean Boulevard and Ferry Road. About 450 feet south of the intersection of Ocean Boulevard and Ferry Road.	*13 *19	*13 *23
<p>Maps available for inspection at the Town Hall, Holden Beach, North Carolina. Send comments to The Honorable Gus Ulrich, Town Manager, Town of Holden Beach, 110 Rothschild Street, Holden Beach, North Carolina 28462.</p>					
North Carolina	Town of Long Beach, Brunswick County.	Atlantic Ocean.....	About 150 feet south of the intersection of East Ocean Highway and 25th Street East.	*12	*12

## PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 250 feet south of the intersection of 25th Place East and East Beach Drive.	*19	*23
Maps available for inspection at the Town Hall, Long Beach, North Carolina. Send comments to the Honorable Charles Derrick, Town Manager, Town of Long Beach, P.O. Box 217, Long Beach, North Carolina 28461.					
North Carolina	Town of Ocean Isle Beach, Brunswick County.	Atlantic Ocean.....	About 2800 feet north of the intersection of Third Street and State Road 904.	*13	*13
			About 300 feet south of the intersection of Isle Plaza and 1st Street.	*20	*23
Maps available for inspection at the Town Hall, Route 2, Ocean Isle Beach, North Carolina. Send comments to the Honorable Betty Williamsome, Mayor, Town of Ocean Isle Beach, Route 2, Box 0-8, Ocean Isle Beach, North Carolina 28459.					
North Carolina	Town of Sunset Beach, Brunswick County.	Atlantic Ocean/Intracoastal Waterway.	At the intersection of 6th Street and South Shore Drive.	*13	*13
			About 800 feet south of the intersection of 6th Street and Main Street.	*20	*23
Maps available for inspection at the Town Hall, 220 Shoreline Drive, Sunset Beach, North Carolina. Send comments to the Honorable Linda Fluegel, Town Administrator, Town of Sunset Beach, 220 Shoreline Drive, Sunset Beach, North Carolina 28459.					
North Carolina	Town of Yaupon Beach, Brunswick County.	Atlantic Ocean.....	About 200 feet south of the intersection of Ocean Drive and Trott Street.	*19	*22
		Intracoastal Waterway/Elizabeth River.	*About 1100 feet north of the intersection of Yaupon Drive and Womble Street.	*12	*12
Maps available for inspection at the Town Hall, 518 Yaupon Road, Yaupon Beach, North Carolina. Send comments to the Honorable May Moore, Mayor, Town of Yaupon Beach, 518 Yaupon Road, Yaupon Beach, North Carolina 28461.					
South Carolina	Unincorporated Areas of Charleston County.	Atlantic Ocean/Folly River .....	About 2100 feet south of the intersection of Folly Beach Road and Oak Island Road.	*14	*14
			Just west of the intersection of Folly Beach Road and Oak Island Road.	*14	*15
Maps available for inspection at the County Planning Department, County Courthouse, Charleston, South Carolina. Send comments to the Honorable E.E. Fava, County Administrator, Charleston County, #2 Courthouse Square, Charleston, South Carolina 29401.					
South Carolina	Township of Folly Beach, Charleston County.	Atlantic Ocean.....	About 2000 feet north of intersection of Center Street and Indian Avenue.	*13	*14
			Along shoreline.....	*19	*23
Maps available for inspection at the City Hall, Folly Beach, South Carolina. Send comments to The Honorable Robert Linville, Mayor, Township of Folly Beach, P.O. Box 48, Folly Beach, South Carolina 29439.					
South Carolina	Unincorporated Areas of Horry County.	Atlantic Ocean.....	At intersection of Vereen Road and Stanley Drive.	*11	*12
			About 275 feet southeast of Atlantic Avenue and Ocean Boulevard.	*20	*23
Maps available for inspection at the County Planning Department, County Courthouse, 811 Main Street, Conway, South Carolina. Send comments to The Honorable M.L. Love, Jr., County Administrator, Horry County, P.O. Box 1236, Conway, South Carolina 29526.					
South Carolina	City of Isle Palms, Charleston County.	Atlantic Ocean.....	At intersection of Forest Trail and 41st Avenue..	*12	*13
		xl .....	Along shoreline.....	*19	*23
Maps available for inspection at the City Hall, Isle of Palms, South Carolina. Send comments to The Honorable Carmen Bunch, Mayor, City of Isle of Palms, P.O. Drawer Q, Isle of Palms, South Carolina 29451.					
South Carolina	City of Sullivans Island, Charleston County.	Atlantic Ocean.....	At intersection of Station 26½ Street and Goldbug Avenue.	*12	*13
			Along shoreline, about 400 feet southeast of intersection of Station 26 Street and Bayonne Street.	*19	*23
Maps available for inspection at the Town Hall, Sullivans Island, South Carolina. Send comments to The Honorable C. Melvin Anderegg, Mayor, City of Sullivans Island, P.O. Box 427, Sullivans Island, South Carolina 29482.					
Tennessee	Town of Brighton, Tipton County.	Hatchel Creek .....	Just downstream of McClure Street .....	None	*301
			Just downstream of Kenwood Street .....	None	*309
Maps available for inspection at the City Hall, Brighton, Tennessee. Send comments to The Honorable Sercy Marshall, Mayor, Town of Brighton, P.O. Box 277, Brighton, Tennessee 38011.					
Tennessee	City of Covington, Tipton County.	Town Creek .....	About 800 feet downstream of Flat Iron Road....	*279	*279
			About 750 feet upstream of Liberty Avenue.....	*296	*296

## PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, Covington, Tennessee. Send comments to the Honorable R.A. Baxter, Jr., Mayor, City of Covington, P.O. Box 768, Covington, Tennessee 38019-0768.					
Tennessee	Unincorporated Areas of Hardin County.	Tennessee River	At northern county boundary	None	*391
			Just downstream of Pickwick Dam	None	*404
		Horse Creek	Just upstream of Pickwick Dam	None	*420
			At state boundary	None	*420
			At mouth	None	*398
			About 3.98 miles upstream of Sylvan Heights Road.	None	*438
Maps available for inspection at the County Courthouse, Savannah, Tennessee. Send comments to The Honorable Jimmy Patterson, County Executive, Hardin County, County Courthouse, Savannah, Tennessee 38372.					
Tennessee	Unincorporated Areas of McNairy County.	Snake Creek	At county boundary	None	*402
			Just downstream of Old Stage Road	None	*415
		Cypress Creek	Just upstream of Falcon Road	None	*429
			At confluence of Turkey Creek	None	*442
Maps available for inspection at the County Courthouse, Selmer, Tennessee. Send comments to The Honorable Houston Trasher, County Executive, McNairy County, County Courthouse, Selmer, Tennessee 38375.					
Wisconsin	City of Sheboygan, Sheboygan County.	Sheboygan River	About 0.48 mile downstream of Lake Shore Drive.	*586	*585
			About 3000 feet upstream of Lower Falls Road	*598	*597
		Lake Michigan	Along shoreline	*584	*585
		Pigeon River	About 2050 feet upstream of mouth	None	*585
			About 0.86 mile upstream of Calumet Drive	*610	*610
Maps available for inspection at the City Hall, 828 Center Avenue, Sheboygan, Wisconsin. Send comments to The Honorable Richard J. Schneider, Mayor, City of Sheboygan, 828 Center Avenue, Sheboygan, Wisconsin 53081.					

Issued: July 11, 1990.

Harold T. Duryee,  
Administrator, Federal Insurance  
Administration.

[FR Doc. 90-16745 Filed 7-17-90; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-14; Notice 01]

RIN 2127-AC84

### Federal Motor Vehicle Safety Standards, Occupant Protection in Interior Impact

AGENCY: National Highway Traffic  
Safety Administration (NHTSA),  
Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an  
amendment to Federal Motor Vehicle  
Safety Standard (FMVSS) No. 201,  
Occupant Protection in Interior Impact.  
The amendment would alter the

requirements concerning the instrument  
panel for vehicles with passenger-side  
bags to encourage greater availability of  
such air bags.

DATES: Comment closing date:  
Comments on this notice must be  
received on or before September 4, 1990.

Proposed effective date: If adopted,  
the amendment concerning the  
instrument panel requirements for  
vehicles with passenger-side air bags  
would be effective upon publication of  
the final rule.

ADDRESSES: All comments on this notice  
should refer to Docket No. 90-14; Notice  
01 and be submitted to the following:  
Docket Section, room 5109, National  
Highway Traffic Safety Administration,  
400 Seventh Street, SW., Washington,  
DC 20590. It is requested that 10 copies  
be submitted. The Docket is open from  
9:30 a.m. to 4 p.m., Monday through  
Friday.

FOR FURTHER INFORMATION CONTACT:  
Daniel Cohen, Chief, Occupant  
Protection Group, NRM-12, Office of  
Motor Vehicle Safety Standards,  
National Highway Traffic Safety  
Administration, 400 Seventh Street, SW.,  
Washington, DC 20590 (202-366-4909).

SUPPLEMENTARY INFORMATION:

### The Standard

Standard No. 201, Occupant  
Protection in Interior Impact, specifies  
occupant impact protection  
requirements for interior vehicle  
components likely to be struck by a lap-  
belted occupant in a crash. Such  
components include instrument panels,  
seat backs, sun visors, and armrests. In  
addition, the Standard requires interior  
compartment doors (e.g., glove  
compartment doors) to remain closed  
during a crash.

To comply with Standard No. 201's  
impact requirements, vehicle  
manufacturers install energy absorbing  
materials in the portions of the  
instrument panel within the "head  
impact area," as defined in 49 CFR 571.3.  
The requirements specify that when  
those portions are impacted by a head  
form at 15 miles per hour (mph), the  
deceleration of the head form must not  
exceed 80g continuously for more than 3  
milliseconds. Installation of appropriate  
energy absorbing materials in the upper  
and middle surfaces of the instrument  
panel to meet the requirement can  
prevent or mitigate chest and head  
injuries resulting from contacts with the  
panel.

### Petition for Rulemaking and Request for Comments

NHTSA received a petition for rulemaking from Chrysler Motors Corporation on August 17, 1988. The petition requested an exclusion from the requirements of Standard No. 201 for those portions of the instrument panel which are ahead of occupants protected by air bag systems which meet the requirements of Standard No. 208, Occupant Crash Protection. NHTSA granted the petition on April 26, 1989 and requested comment on issues related to the petition in a document published in the Federal Register on August 10, 1989 (54 FR 32830). Below, NHTSA discusses the background and contents of its proposal in this area. In the August 10 notice, NHTSA also requested comment on issues relating to the current exclusion of "console assemblies" from the requirements of Standard No. 201. NHTSA will deal with this issue in a separate proposal in the future.

### Proposed Amendment to Facilitate Passenger-Side Air Bags

NHTSA received 11 comments in response to the request for comments. NHTSA received comments from the Insurance Institute for Highway Safety, the Automotive Occupant Restraints Council, and 9 motor vehicle manufacturers or importers. No commenter opposed a modification of Standard No. 201 to facilitate the installation of top-mounted, passenger-side air bags.

Motor vehicle manufacturers identified problems complying with Standard No. 201 associated with top-mounted, passenger-side air bags. The problem purportedly occurs because, to optimize air bag deployment with such a system, the air bag housing should not be located more than 1 inch below the instrument panel surface. To meet the Standard's head from impact test at 15 mph, the equivalent of about 2 inches of energy absorbing material is needed. The "head impact areas" in the instrument panels of some top-mounted rear-deployment systems have been able to meet the Standard's requirements, although it has been difficult. However, commenters stated that, with padding limited to 1 inch, compliance would be very difficult, if not impossible, for upward deployment systems.

Manufacturers identified a number of benefits from installation of top-mounted, upward-deployment air bags, instead of rearward-deployment systems. The major one is the reduced risk of injury to out-of-position

occupants or standing children. Other advantages listed by commenters include the following: the top portion of the instrument panel provides more space for locating and supporting the air bag module; the air bag module is more remote from the knee impact surface and is thus less likely to affect knee and femur loads adversely; since the mass of the air bag module is closer to body structure, shorter and stiffer supporting members can be used, resulting in a more stable platform for deployment; and the simplification of the design of the instrument panel due to less interference between the air bag system and the glove box.

In addition, a change in Standard No. 201 to facilitate installation of top-mounted, upward-deployment air bags may increase the installation rate of passenger-side air bags. In its comments, Ford Motor Company indicated that "feasibility of a top-mounted, upward-deployment supplemental passenger air bag system may substantially increase availability of passenger air bags, particularly in compact and subcompact cars, by helping to reduce overall risks to out-of-position occupants. Modification of S3.1 of Standard 201 would aid in establishing feasibility of the upward-deployment supplemental air bag."

In the request for comments, NHTSA also asked whether lap/shoulder belts should be required to be provided for all positions for which the requirements of Standards No. 201 might be relaxed. No commenter opposed requiring lap/shoulder belts to be provided for the front outboard passenger. One commenter opposed such a requirement for the middle passenger position, believing that lap/shoulder belts would be unnecessary and counter productive in such a position.

After considering the public comments and further analyzing the issues, NHTSA has decided to propose an amendment to Standard No. 201 to relax the requirements in vehicles with passenger-side bags. The proposal would reduce the head form impact velocity specified by Standard No. 201 from 15 mph to 12 mph for vehicles equipped with passenger-side air bags. The proposed amendment would apply to all vehicles with passenger-side air bags, not just those with the "upward deployment" variety. This approach would allow manufacturers wide latitude in innovation for all passenger-side air bags. However, because NHTSA wants to ensure that this rulemaking results in net safety benefits, the agency below solicits comments on a number of issues including means of limiting the

test speed reduction to only those areas of the instrument panel necessary to accommodate the top-mounted air bag.

NHTSA is proposing a head impact velocity of 12 mph because most air bag systems will deploy in frontal crashes at speeds of 12 mph or greater. In frontal crashes with impacts over 12 mph, front passengers would most likely be protected by the deployment of passenger-side air bags that would be installed as a condition of qualifying for the 12 mph head impact velocity test in this proposed amendment to Standard No. 201.

A number of commenters recommended a head impact velocity of 10 mph. However, a 10 mph requirement would be less protective than a 12 mph requirement, which commenters did not demonstrate to be infeasible.

The proposal would also require the installation of lap/shoulder belts at the right front seating position if the manufacturer chooses to meet the requirements of Standard No. 201 at a 12 mph head impact velocity, rather than the 15 mph velocity. NHTSA believes that this additional requirement would provide protection in crashes where the air bag is likely to deploy. Examples of such crashes include frontal crashes under 12 mph; crashes involving a car whose air bag has been deployed, but not replaced; rear crashes in which the unrestrained occupant rebounds from the seat and strikes the instrument panel; side crashes; and rollover crashes.

NHTSA is not proposing to require installation of lap/shoulder belts for the center front seating position. NHTSA never meant to imply that the lap/shoulder belt requirement should apply to this position.

NHTSA proposes to make this amendment effective upon publication of the final rule. The amendment would not establish additional requirements, but would establish an alternative for manufacturers to choose at their option. Therefore, NHTSA believes that good cause would exist to make the amendment effective immediately upon publication in the Federal Register. Such an immediate effective date would also allow motor vehicle manufacturers the greatest flexibility in designing vehicles with passenger-side air bags.

However, before issuing a final rule based on this proposal, NHTSA must be certain that this change in Standard No. 201 will result in a net safety benefit. The agency is proposing this amendment because it may encourage manufacturers to install more passenger-side air bags than they might without such an amendment to Standard

No. 201. The installation of more passenger-side air bags would lead to a reduction of fatalities and moderate-to-severe injuries in vehicle crashes. There is a trade-off since a reduction in the Standard No. 201 test speed would be likely to result in vehicles having instrument panels with less energy absorption capability, at least in the area of the top-mounted air bag. The consequence of this would be some increase in minor-to-moderate injuries in low-speed vehicle crashes.

About 10,000 head and face injuries occur annually due to impacts with the center and right portions of the instrument panel in accidents with impact speeds under 12 mph. In addition, there are approximately 7,000 head and face injuries due to impacts with the center and right portions of the instrument panel in rear-impact, side-impact, and rollover crashes. In these situations, the air bag would probably not deploy, and thus would offer no protection. However, because the instrument panel would be stiffer on vehicles with passenger-side air bags, the severity of these injuries might be increased. In addition, the reduction in the Standard No. 201 test speed would result in some injuries that would not occur without a change in that test speed. However, these injuries are typically not severe. About 94 percent are AIS 1 injuries and 5 percent are AIS 2 injuries. Less than 1 percent are AIS 3 or higher injuries.

In contrast, NHTSA believes that there is potential for benefits in more severe accidents if an amendment to Standard No. 201 increases the use of passenger-side air bags. Over 7,400 occupants of the right-front seating position were killed in passenger cars and light trucks in 1988. Expanding the use of passenger-side air bags would make a substantial contribution to reducing this number. However, the agency does not have any information to determine the relative safety performance of upward-deploying and rearward-deployment air bags for correctly seated occupants. The agency must determine whether this amendment would promote new air bag installation or only result in a shift in air bag designs from rearward-deploying systems to upward-deploying systems.

Automatic safety belts are the primary occupant protection alternative to air bags for the right front seating position. If automatic safety belts have a high enough usage rate, they can have as many or more benefits than air bags. However, while NHTSA does not yet have enough crash data to evaluate conclusively the real-world

effectiveness of various automatic restraint systems, the agency believes that the installation of air bags has greater potential for total safety benefits compared to automatic safety belts because air bags provide supplemental protection in addition to the basic protection of a safety belt system. See discussion at 52 FR 10096 (March 30, 1987), where NHTSA provides incentives for air bags; and 55 FR 1586 (January 17, 1990) where NHTSA states plans for evaluation of different automatic occupant protection systems.

In response to agency's earlier Federal Register notice, commenters indicated that upward-deploying passenger-side air bags may have a decided advantage compared to other air bags in reducing injuries to out-of-position occupants, particularly standing children. NHTSA requests comments to provide data or estimates of the possible greater safety benefits of upward-deploying air bags or other information on how such air bags are preferable.

The agency has tentatively concluded that an amendment to Standard No. 201 to change the test speed requirement has the potential to result in net safety benefits if the amendment results in greater installation of air bags in the right-front passenger seating position of vehicles. However, to reach a final conclusion that such an amendment would result in net safety benefits, the agency must determine the number of additional passenger-side air bags that would be installed in response to the amendment to Standard No. 201. Accordingly, the agency seeks information from manufacturers on the number of passenger-side air bags they plan to install (1) if the agency does not reduce the current Standard No. 201 test speed and (2) if the agency does reduce the test speed specified in Standard No. 201. The agency also seeks comments on means of limiting the test speed reduction to only those areas on the instrument panel necessary to accommodate the top-mounted air bag. Finally, NHTSA requests data on manufacturers' current and projected deployment-speed thresholds for air bags. The agency tentatively concludes that any amendments to Standard No. 201 test speed should ensure that instrument panels maintain sufficient energy-absorption capabilities, by meeting the 80g requirements, at all speeds below that at which air bags deploy.

#### Regulatory Impacts

##### 1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major"

within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The amendment would not establish additional requirements, but would establish an alternative for manufacturers to choose at their option. A preliminary regulatory evaluation for this rulemaking will be available in the docket.

##### 2. Small Business Impacts

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendment would not establish additional requirements, but would establish an alternative for manufacturers to choose at their option. Accordingly, no regulatory flexibility analysis has been prepared.

##### 3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that, if adopted as a final rule, the proposal would not have a significant impact on the quality of the human environment.

##### 4. Federalism

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

#### Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies

from which the purportedly confidential information has been deleted should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket

after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

#### PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

#### § 571.201 [Amended]

2. Section 571.201 would be amended by revising S3.1 to read as follows:

**S.3.1 Instrument panels.** Except as provided in S3.1.1, when that area of any frontal interior surface that is within the head impact area is impacted in accordance with S3.1.2 by a 15-pound, 6.5-inch diameter head form at—

(a) A relative velocity of 15 miles per hour for all vehicles except those specified in paragraph (b) of this section;

(b) A relative velocity of 12 miles per hour for vehicles that meet the occupant crash protection requirements of S5.1 of 49 CFR 571.208 by means of inflatable restraint systems and meet the requirements of S4.1.2.1(c)(2) of 49 CFR 571.208 by means of a Type 2 seat belt assembly at the right front designated seating position,

the deceleration of the head form shall not exceed 80g continuously for more than 3 milliseconds.

\* \* \* \* \*

Issued on July 12, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-18712 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register

Vol. 55, No. 138

Wednesday, July 18, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

#### 1990-91 National Marketing Quota and Price Support Level for Burley Tobacco

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

**ACTION:** Notice of determination.

**SUMMARY:** The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1990 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1990 marketing quota for burley tobacco to be 602.3 million pounds and that the price support level for the 1990 crop would be \$1.558 per pound.

**EFFECTIVE DATE:** February 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736—South Building, P.O. Box 2415, Washington, DC 20013 (202) 447-8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major."

This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual

industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the ASCS nor the CCC are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1990 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1987, 1988, and 1989 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national reserve:
  - A. For establishing marketing quotas for new farms, and
  - B. For making corrections and adjusting inequities in old farms;
7. The national factor; and
8. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

#### Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2)

the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed 6 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 302A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1990 crop of burley by January 15, 1990. Six such manufacturers were required to submit such a statement for the 1990 crop and the total of their intended purchases for the 1990 crop was 395.1 million pounds.

The three-year average of exports is 161.6 million pounds. For the 1989 quota determination, Census data was used. However, a 1989 Office of Inspector General investigation of General Sales Manager (GSM) program documents reported that certain tobacco shipments (both flue-cured and burley) that had been declared as U.S.-origin tobacco were actually foreign-grown. Accordingly, Census exports were adjusted downward a total of 0.6 million pounds over the three-year period to reflect this misclassification.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1989 marketing quota for burley tobacco. The national marketing quota for the 1989 crop year was 587.6 million pounds (54 FR 26059). Accordingly, the reserve stock level for use in determining the 1990 marketing quota for burley tobacco is 88.1 million pounds.

As of January 12, 1990, the two loan associations had in their inventory 60 million pounds of the 1985-88 crops which remained unsold (net of deferred sales). The 1989 crop is expected to be

nil. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 28.1 million pounds.

The total of the three marketing quota components for the 1990-91 marketing year is 584.8 million pounds. Section 319 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Since the total supply of burley tobacco is considered less than normal, the Secretary exercised this discretion authority and increased the 3-component total by 17.5 million pounds. Accordingly, the national marketing quota for the marketing year beginning October 1, 1990, for burley tobacco is 602.3 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1990 crop of burley tobacco of 863,000 pounds is adequate for these purposes.

#### Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1990 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1990 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1989 crop of burley tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(i) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in

which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(ii) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, section 106(f)(7)(B) of the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages [(the difference between (A)(I) and (A)(II)] is 1.1 cents per pound. The difference in the cost index from January 1 to December 31, 1989, is 5.8 cents per pound.

Applying these components to the price support formula (1.1 cents per pound, two-thirds weight; 5.8 cents per pound, one-third weight) results in a 2.6 cent increase in the level of price support from the previous year.

This level is exclusive of any budget deficit reduction required by Gramm-Rudman-Hollings.

The level of support and the national marketing quota for the 1990 burley marketing year was announced on February 1, 1990, by the Secretary of Agriculture. This notice affirms these determinations.

#### Determinations 1990-91 Marketing Year

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1990:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1990 year totaled 395.1 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 161.6 million pounds, based on exports of 155.8 million pounds, 164.6 million pounds and 165.0 million pounds for the 1987, 1988, and 1989 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 38.1 million pounds, based on 15 percent of 1989 national marketing quota of 587.6 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is plus 28.1 million pounds, based on a reserve stock level of 68.1 million pounds less anticipated loan stocks of 60 million pounds.

(e) *National marketing quota.* The national marketing quota is 602.3 million pounds, based on 103 percent of the three component total of 584.8 million pounds.

(f) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm marketing quotas and for establishing marketing quotas for new farms has been determined to be 863,000 pounds.

(g) *National factor.* The national factor is determined to be 1.025.

(h) *Price support level.* The level of support for the 1990 crop of burley tobacco is 155.3 cents per pound.

**Authority:** 7 U.S.C. 1301, 1313, 1314c, 1375, 1445, 1421.

Signed at Washington, DC on July 10, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-16704 Filed 7-17-90; 8:45 am]

BILLING CODE 3410-05-M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting; Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alabama Advisory Committee to the Commission will convene at 2:30 p.m. and adjourn at 5 p.m., on August 3, 1990, Performing Arts Center, 1000 Selma Avenue, Selma, Alabama 36702. The purpose of the meeting is to consider a proposed project on race relations in Selma.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, William Bernard, or William F. Muldrow, Civil Rights Analyst of the Central Region Division (818) 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, July 9, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-16720 Filed 7-17-90; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-502]

#### Certain Circular Welded Carbon Steel Pipe and Tube from Thailand

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of termination of antidumping duty administrative review.

**SUMMARY:** On March 30, 1990, counsel for Thai Union Steel Pipe Co., Ltd. requested an administrative review of the antidumping duty order on certain circular welded carbon steel pipe and tube from Thailand. Thai Union Steel Pipe Co., Ltd. subsequently withdrew the request for review on April 23, 1990.

**EFFECTIVE DATE:** July 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Alain Letort or Stephen Jacques, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3434 or 377-0180.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 30, 1990, the Department of Commerce received a letter from a respondent, Thai Union Steel Pipe Co., Ltd., requesting an initiation of an administrative review of the antidumping duty order on certain circular welded carbon steel pipe and tube from Thailand. Thai Union Steel Pipe Co., Ltd. requested that the Department review its entries from March 1, 1989 through February 28, 1990.

Thai Union Steel Pipe Co., Ltd. subsequently withdrew the request for review on April 23, 1990. Accordingly, the Department has determined to terminate the review.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a)(5) (1989).

Dated: July 10, 1990.

Francis Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-16692 Filed 7-17-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-802]

#### Final Determination of Sales at Less Than Fair Value, Gray Portland Cement and Clinker From Mexico

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of gray portland cement and clinker from Mexico.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of gray portland cement and clinker from Mexico, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

**EFFECTIVE DATE:** July 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Louis Apple or Brad Hess, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or 377-3773 respectively.

#### SUPPLEMENTARY INFORMATION:

##### Final Determination

We determine that imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

##### Case History

Since publication of the preliminary determination (55 FR 13817, April 12, 1990), the following events have occurred. On April 9, 1990, respondent CEMEX, S.A. (CEMEX) requested that we postpone making our final determination for a period of 21 days pursuant to section 735(a)(2)(A) of the Act. On April 20, 1990, we published a notice postponing the final

determination until July 10, 1990 (55 FR 14989).

On April 19, 1990, petitioner alleged that critical circumstances exist. On May 25, 1990, we published a preliminary finding that critical circumstances do not exist (55 FR 21639).

We verified the questionnaire responses in Mexico from April 23 to May 4, 1990, and in Phoenix, Arizona and Buda, Texas from May 21 to May 22, 1990.

On June 8, 1990, petitioner and respondents CEMEX and Apasco, S.A. de C.V. (Apasco) withdrew their requests for a hearing.

Petitioner and respondents CEMEX and Apasco submitted comments for the record in case briefs dated June 13, 1990, and in rebuttal briefs dated June 19, 1990.

#### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than that of being ground into finished cement.

Gray portland cement is currently classifiable under HTS item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements".

#### Period of Investigation

The period of investigation (POI) is April 1, 1989 through September 30, 1989.

#### Such or Similar Comparisons

Pursuant to section 771(16)(C) of the Act, we established two categories of "such or similar" merchandise: gray portland cement and clinker.

Product comparisons were made on the basis of standards established by the American Society for Testing Materials (ASTM standards). All of the cement sold during the POI falls within the following three ASTM standards: Type I, Type II, and Type V cement. We compared U.S. sales of bagged cement to home market sales of bagged cement, and we compared U.S. sales of bulk cement to home market sales of bulk cement.

CEMEX and Cementos Hidalgo had no sales of clinker in the United States during the POI. Apasco sold clinker to the United States during the POI, but did not sell clinker in either the home or third country markets. Because of the small volumes involved, we did not use sales of clinker in our analysis.

For cement, all respondents sold identical merchandise (*i.e.*, types of cement) in the home market with which to compare merchandise sold in the United States.

In order to determine whether there were sufficient sales of gray portland cement in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales of cement to the volume of third country sales of cement, in accordance with section 773(a)(1) of the Act. All respondents had sufficient home market sales.

#### Fair Value Comparisons

To determine whether sales of gray portland cement and clinker from Mexico to the United States were made at less than fair value, we compared the U.S. price to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

#### United States Price

For CEMEX, we based U.S. price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. Where sales to the first unrelated purchaser took place after importation into the United States, we based U.S. price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. For Apasco and Cementos Hidalgo, we based U.S. price on purchase price, because all sales were made directly to unrelated parties prior to importation into the United States.

#### CEMEX

For CEMEX, we calculated purchase price based on packed, f.o.b. mid-bridge or c.i.f. prices. We made deductions, where appropriate, for discounts and rebates, foreign inland freight, ocean freight, Mexican brokerage, and U.S.

brokerage. In accordance with section 772(d)(2)(A) of the Act, we made an additional deduction for U.S. excise taxes and merchandise processing fees. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of value added tax (VAT) that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of the VAT added to the U.S. price by applying the home market VAT rate to a U.S. price net of all charges and expenses incurred as a result of transporting the merchandise outside Mexico.

We calculated ESP based on packed, f.o.b. terminal or c.i.f. prices. We made deductions, where appropriate, for discounts and rebates, foreign inland freight, U.S. inland freight, ocean freight, Mexican brokerage, and U.S. brokerage. In accordance with section 772(d)(2)(A) of the Act, we made an additional deduction for U.S. excise taxes and merchandise processing fees. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit expenses, packing expenses incurred in the United States, and indirect selling expenses consisting of inventory carrying costs and general indirect selling expenses incurred in Mexico and the United States. We recalculated CEMEX's inventory carrying cost using the Mexican interest rate for the Mexican portion of the calculation. We made additions, where appropriate, for revenue for special delivery charges. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of VAT that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of the VAT added to the U.S. price by applying the home market VAT rate to a U.S. price net of all charges and expenses incurred as a result of transporting the merchandise outside Mexico.

CEMEX reported that some of the cement sold underwent further manufacturing. Because of the small quantity involved, we did not include these sales in our analysis.

#### Apasco

For Apasco, we calculated purchase price based on the f.o.b. Mexican port price. We made deductions for discounts, foreign inland freight, foreign inland insurance, Mexican brokerage, demurrage, truck loading cost, and ship loading cost. We did not adjust FMV for reported technical service expenses as a direct selling expense, because we could not verify that these expenses were directly related to sales of the subject

merchandise. In accordance with section 772(d)(1)(B) and (C) of the Act, we added to the U.S. price the amount of rebated duties and the amount of VAT that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of the VAT added to the U.S. price by applying the home market VAT rate to a U.S. price net of all charges and expenses incurred as a result of transporting the merchandise outside Mexico.

#### Cementos Hidalgo

For Cementos Hidalgo, we calculated purchase price on the packed, f.o.b. plant or c & f price. We made deductions for ocean and foreign inland freight. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of VAT that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of the VAT added to the U.S. price by applying the home market VAT rate to a U.S. price net of all charges and expenses incurred as a result of transporting the merchandise outside Mexico.

#### Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated FMV based on home market sales.

#### CEMEX

For CEMEX, we calculated FMV based on packed, f.o.b. ex-factory or c.i.f. prices to unrelated and related customers in the home market. We used the related party sales, because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arms-length.

We made deductions, where appropriate, for discounts, rebates, and inland freight. Where appropriate, we added packing revenue and handling revenue. For comparisons of bagged cement, we deducted home market packing costs from the FMV and added to FMV U.S. packing costs incurred in Mexico.

Pursuant to § 353.56 of the regulations (19 CFR 353.56), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses on purchase price sales. For ESP sales, we deducted credit expenses from U.S. price.

We made a circumstance of sale adjustment in accordance with section 773(a)(4)(B) of the Act to eliminate any differences in taxation between the two markets. Because home market prices were net of VAT, this adjustment was

made by adding the hypothetical tax on the U.S. sale to both the U.S. price and the FMV.

For comparisons to ESP sales, we made additional deductions from the FMV for home market indirect selling expenses, which consisted of general indirect selling expenses and inventory carrying costs. We capped the amount deducted for indirect selling expenses incurred in the home market by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.56(b)(2) of our regulations (19 CFR 353.56).

#### Apasco

For Apasco, we calculated FMV based on f.o.b. plant, pickup point or customer facility prices to unrelated customers in the home market.

We made deductions, where appropriate, for discounts, inland freight, inland insurance, and loading costs. Because all U.S. sales were sales of bulk cement in the home market for our comparisons. Therefore, no packing charges were deducted.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses, advertising and after-sale storage facilities pursuant to § 353.56 of the regulations (19 CFR 353.56). We made additions for interest revenue for early payments made on certain sales. We did not allow reported technical service expenses as a direct selling expense, because we could not verify that this expense was directly related to sales of the subject merchandise.

We made a circumstance of sale adjustment in accordance with section 773(a)(4)(B) of the Act to eliminate any differences in taxation between the two markets. Because home market prices were net of VAT, this adjustment was made by adding the hypothetical tax on the U.S. sale to both the U.S. price and the FMV.

#### Cementos Hidalgo

For Cementos Hidalgo, we calculated FMV based on packed, f.o.b. plant or c & f prices to unrelated customers in the home market.

We made deductions, where appropriate, for discounts and inland freight. For comparisons of bagged cement, we deducted home market packing costs from the FMV and added to FMV U.S. packing costs.

Where appropriate, we made circumstance of sale adjustments for differences in credit expenses and bank fees pursuant to section 353.56 of the regulations (19 CFR 353.56). Since Cementos Hidalgo did not report the

bank fees, we resorted to best information available and used the highest verified bank fee on U.S. sales. We also recalculated the U.S. credit expense using the actual credit days on the sales verified. Since the credit days were under-reported on all verified sales, we have used the average credit day period of the verified U.S. sales as best information available in our calculation of credit expense on all other U.S. sales.

We made a circumstance of sale adjustment in accordance with section 773(a)(4)(B) of the Act to eliminate any differences in taxation between the two markets. Because home market prices included VAT, this adjustment was made by subtracting VAT from home market prices then adding the hypothetical tax on the U.S. sale to both the U.S. price and the FMV.

#### Currency Conversion

When calculating FMV, we typically make currency conversions in accordance with § 353.60 of our regulations (19 CFR 353.60), using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York did not provide any exchange rate information for Mexico during the period of this investigation, we used the average monthly exchange rates for Mexico published by the International Monetary Fund as a reasonable surrogate for the Federal Reserve exchange rates.

#### Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of gray portland cement and clinker from Mexico. Section 733(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value, and

(2) That there have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to § 353.16 (f) and (g) of our regulations, we examined the period beginning in the month following the

month in which the petition was filed and ending in the month in which we published our preliminary determination. Because the petition was filed near the end of the month of September, we selected the following month as the beginning of the base period.

We then compared the quantity of imports during the base period over the imports during the immediately preceding period of comparable duration for each of the respondents. We found that shipments from none of the respondents had increased by at least 15 percent during the base period in accordance with 19 CFR 353.16(f)(2). Based on the above, we find that imports of gray portland cement and clinker from Mexico have not been massive over a relatively short period.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that such merchandise was being sold at less than fair value. Therefore, we find that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of gray portland cement and clinker from Mexico.

#### Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

#### Interested Party Comments

##### Comment 1

Petitioner argues that the Department should treat CEMEX and Cementos de Chihuahua (CDC) as one respondent as was done in the preliminary determination, because the companies are closely intertwined and transactions take place between the companies.

##### DOC Position

We agree. We determine that CDC and CEMEX do not constitute separate manufacturers or exporters for purposes of the dumping law. The administrative record establishes a close, intertwined relationship between CDC and CEMEX based on their corporate organization and ownership. CDC is predominantly owned by CEMEX, and the companies share common boards of directors. Moreover, CDC and CEMEX have conducted transactions between themselves during the POI. Finally, the

production equipment at both companies consists of the same type of equipment so it would not be necessary to retool either company's facilities to shift production. Therefore, we have treated CDC and CEMEX as one respondent and calculated a single weighted-average margin for CEMEX. See, Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy 53 FR 27187, 27189 (1988)

#### *Comment 2*

Petitioner argues that the Department should reject the response submitted by Cementos Hidalgo, S.C.L., because it was untimely, incomplete, and inaccurate. Petitioner suggests that, as best information available, the Department should use the "all other" rate.

#### *DOC Position*

We do not consider Cementos Hidalgo's response to be untimely. It was submitted in final form on the same day that CEMEX's final response was due. The tape was revised shortly thereafter, but it was submitted before the section B and C deficiency response was due for CEMEX. Although there were some home market sales not reported, these sales accounted for only a small percentage of total home market sales. We have used best information available for these sales. We have also used best information available for the bank commissions which were not reported and for the inaccurate credit days for the U.S. sales.

#### *Comment 3*

Petitioner argues that the Department should reject Apasco's voluntary response and use the dumping margin alleged in the petition as best information for the final determination.

Petitioner asserts that voluntary respondents, such as Apasco, must meet a higher standard of accuracy and completeness before their responses are accepted. Petitioner argues that because Apasco failed to report certain sales pursuant to contracts, its response has failed this higher standard. Apasco maintains that its reporting of all sales is complete and that any deficiencies in its submissions have been insignificant.

#### *DOC Position*

We disagree with the petitioner. As set forth in Comment 15 and based upon the findings reported in our verification report, we have determined that Apasco's questionnaire response is accurate and complete.

#### *Comment 4*

Petitioner argues that the Department should reject all information favorable to CEMEX that was submitted later than one week prior to verification.

#### *DOC Position*

We disagree with petitioner. This information merely includes corrections to the database found in preparation for verification. These were minor corrections to factual information already contained in the record of the proceeding.

#### *Comment 5*

For Cementos Hidalgo, petitioner argues that the Department should use best information available for unreported U.S. and home market sales. Petitioner suggests the Department use the "all others" margin from the preliminary determination as best information for these sales.

#### *DOC Position*

We have used the highest reported home market price as best information available for the unreported home market sales. We did not find any unreported U.S. sales. There was a slight difference in the reported and verified total U.S. quantities, but the amount was so small that it was negligible.

#### *Comment 6*

Petitioner argues that the Department should have accepted its allegations and initiated an investigation of sales below the cost of production.

#### *DOC Position*

As outlined in our preliminary determination, we rejected petitioner's allegations because, for CEMEX, the allegation was based on one type of cement, sales of which were so few that they would not have been disregarded in our FMV calculations even if we had found all such sales to have been sold below cost. We rejected the allegation regarding Apasco, because the study used as the basis for the allegation did not identify the costs of the specific products manufactured by Apasco that were alleged to be sold below cost.

#### *Comment 7*

CEMEX argues that matching products according to how they are sold is contrary to the antidumping statute and prior Department practice. CEMEX maintain that in our investigation of cyanuric acid (see, Final Determination of Sales at Less than Fair Value: Cyanuric Acide and its Chlorinated Derivatives from Japan, 46 FR 7424, 7426 (1984)), the Department deemed physically identical merchandise to be

comparable even through the merchandise was packaged differently and intended for different customers. Therefore, the Department cannot base its product matches on descriptions of the merchandise as sold. Furthermore, CEMEX argues that Mexican customers are generally indifferent to whether cement is marketed as Type I or Type II cement, and that matching cement by the way it is marketed and invoiced can achieve absurd results, such as placing the same product in more than one identical matching category.

However the comparisons are made, CEMEX maintains that matching within ranges and standards accepted by the industry as set forth by ASTM is necessary, because it is the only reasonable way to make a comparison of goods when the chemical composition of those goods necessarily varies. With industry standards as the basis for identical matches, CEMEX argues that there can be no adjustments for differences in merchandise in this case.

Petitioner argues that the Department should match merchandise based on the way it is invoiced. Petitioner maintains that the Cyanuric Acid case cited by CEMEX does not support CEMEX's contention that product matches must be based on physical characteristics, because in Cyanuric Acid there was no contention that the products were mislabelled on home market invoices, or that the products were within more than one industry-recognized specification. Furthermore, citing overall higher invoiced prices for Type II cement in the home market, petitioner contends that the Mexican consumers perceive a very real difference between cement types. Finally, petitioner submits that CEMEX cannot argue that ASTM standards for cement govern identical merchandise issues if it also claims that cement that meets more than one ASTM specification cannot be compared as identical merchandise in either of two appropriate ASTM categories.

#### *DOC Position*

We disagree with CEMEX. For merchandise comparisons, section 771(16)(A) of the Act states a clear preference for merchandise which is identical in physical characteristics to the merchandise sold in the United States. Throughout this investigation, both petitioner and CEMEX have noted that customers and producers in both markets rely on ASTM standards to differentiate between products. Furthermore, we note that the Mexican standards and the ASTM standards used in the United States are practically the same. Therefore, we have

considered that if a product is sold as merchandise meeting a certain ASTM standard, and in fact the product meets that ASTM standard, it is identical in physical characteristics to the merchandise sold in Mexico which meets, and is sold as meeting, the same standards.

We have used the invoice to determine the proper ASTM standard, because we verified that the product listed on the invoice met the ASTM standard indicated on the invoice. For example, cement invoiced as Type I cement met the Type I standard, even though it may have also met the Type II standard. We acknowledge that at verification we noted one instance where Type II cement was mistakenly invoiced as Type I cement. However, as the verification report also reveals, this was a mistake and is not the ordinary practice in the industry. Because producers label and sell cement, and customers buy cement based on these standards, we have determined that matching by ASTM standard as invoiced is the most reasonable basis for making equitable identical merchandise comparison.

#### Comment 8

Petitioner claims that the Department should make an adjustment for differences in merchandise to account for the extra expense incurred by one CEMEX company for grinding cement. CEMEX argues that since the Department has determined that identical products exist, there is no need for difference in merchandise adjustments.

#### DOC Position

CEMEX's verified production records confirm that cement ground to slightly different levels of fineness may still meet the same ASTM standards and be sold as identical merchandise. Therefore, and for reasons explained in Comment 7, we have determined that all merchandise within a particular ASTM standard can be compared as identical without adjustments for differences in merchandise.

#### Comment 9

CEMEX argues that the Department's failure to compare sales at the same level of trade in its preliminary determination is contrary to the antidumping statute and to the Department's regulations and practice. Petitioner contends that CEMEX's request regarding level of trade is untimely and thereby prevented proper verification. Furthermore, petitioner claims that in its preliminary determination the Department

calculated FMV and U.S. price based on sales at the same level of trade.

#### DOC Position

For our final determination, we determined that CEMEX had sufficient sales in the home market at the same commercial level of trade as its U.S. sales to permit an adequate comparison to all U.S. sales.

However, information concerning levels of trade submitted by Apasco and Cementos Hidalgo was not complete enough for us to determine the appropriate levels of trade for Apasco's and Cementos Hidalgo's merchandise comparisons. Therefore, we assumed that all home market sales of the physically identical merchandise were at the same level of trade.

#### Comment 10

Petitioner argues that CEMEX's shipments to the U.S. that were made during the POI pursuant to long-term Contract 1 should be included in the calculation of the U.S. price, because the material terms of the contract were not fixed until the date of shipment. Petitioner argues, among other things, that there was no definite price term.

CEMEX explains that it made sales to two regions in the United States pursuant to Contract 1 during the POI. CEMEX argues that the price and quantity terms for sales made to both regions were fixed in an oral agreement and a letter that preceded the POI. CEMEX argues that the price term was fixed because there was nothing further to negotiate after the oral agreement. Specifically, CEMEX argues that the formula used to calculate the price for sales to Region 2 establishes a definite price term in accordance with Department precedent. CEMEX also argues that the quantity term was fixed, because the contract required CEMEX to supply all of its customer's annual requirements.

#### DOC Position

We disagree with CEMEX in part. In accordance with section 776 of the Act (19 U.S.C. 1677e), which requires the Department to verify all information used in making a final determination, we usually cannot rely upon oral agreements standing alone to establish the date of sale (*see*, Final Determination of Sales at Less than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28,170 (1987)). Although we usually consider the date when the parties execute a long-term contract that establishes definite price and quantity terms as the date of sale (*see*, Final Determination of Sales at Less Than

Fair Value: Fall-Harvested Round White Potatoes from Canada, 48 FR 51,669 (1983)), CEMEX presented no evidence during the investigation that established when the parties actually had signed long-term Contract 1. The Uniform Commercial Code, however, recognizes the existence of a contract when the parties have begun performance pursuant to written instruments, such as letters, memoranda, company correspondences, and the like (*see* also, Certain Forged Steel Crankshafts from the Federal Republic of Germany, *supra*).

In this case, we verified for sales to Region 1 that the parties had begun performance pursuant to a letter agreement, dated before the POI, that establishes definite price and quantity terms. Because we determine under these circumstances that the parties had established definite price and quantity terms for sales to Region 1 before the POI, we determine that the date of sale for these shipments precedes the POI. Accordingly, we have not included in our calculations shipments made to Region 1.

For sales to Region 2, however, we verified that the parties did not establish a definite price term before the POI, because a formula contained in the letter agreement noted above required one of the parties to enter into subsequent negotiations to establish the final selling price. Although CEMEX relinquished control over the final selling price after the sale of the subject merchandise to its customer, CEMEX's customer still maintained control over that price through negotiations with its own customers. Because the price term appearing in the letter agreement noted above is not established until CEMEX's customer concludes negotiations with its customers, that term is indefinite and, therefore, not sufficient to establish the date of sale. We consider the date of shipment to be the date of sale under these circumstances and have included in our calculations all shipments that CEMEX made to Region 2 during the POI.

We also disagree with CEMEX's argument that the contract formula used to calculate price for sales to Region 2 establishes a definite price term in accordance with our administrative precedent. In contrast to formulas found to establish a definite price term, CEMEX's formula is not pegged to some external event that would make unnecessary further negotiations by either party to the contract. *See*, Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from France, 52 FR 812 (1987) (publicly quoted

price list); *Voss International Corp., v. United States*, 628 F. 2d 1328 (CCPA 1980) (peg to world market prices); *Final Determination of Sales at Less Than Fair Value: Frozen Concentrated Orange Juice from Brazil*, 52 FR 832A (1989) (peg to commodity prices).

#### Comment 11

Petitioner argues that CEMEX's shipments to the U.S. that were made during the POI pursuant to Contract 2 should be included in the calculation of U.S. price. Petitioner argues that although Contract 2 is a minimum quantity contract, and CEMEX agrees that all shipments made during the POI in excess of the minimum quantity should be reported, there is no indication when the minimum quantity was met. Therefore, all shipments made during the POI should be included in the calculation of U.S. price.

CEMEX argues that the Department verified the CEMEX had supplied its customer with the quantity stipulated in the purchase agreement. Therefore, only shipments made during the POI that exceed the minimum amount stated in Contract 2 should be included in the calculation of U.S. price.

#### DOC Position

Where a minimum quantity contract is involved, we consider the date when the parties executed (*i.e.* signed) the contract to be the date of sale for those sales made up to the minimum quantity. See, *Titanium Sponge from Japan*; *Final Determination of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part*, 54 FR 13,403 (1989). For sales made in excess of the minimum quantity, we consider the date of purchase order or the date of shipment to be the date of sale (*Id.*). The rationale underlying this different treatment is that neither the seller nor the buyer knows at the time of contract formation the actual quantity to be supplied or purchased above the minimum quantity requirement (*Id.*).

In this case, we verified that although there was no evidence that specified the date when the parties had signed the written purchase agreement, which establishes definite price and minimum quantity terms, the parties had begun performance pursuant to this agreement before the POI. We also verified that the parties had adhered to the minimum quantity term contained in this purchase agreement. We consider the price and the minimum quantity terms to have been established before the POI under these circumstances. As a result, we determine that the date of sale for shipments made up to the minimum quantity specified in the written

purchase agreement precedes the POI. Accordingly, we have not included such sales in our calculations. However, we have included in our calculations shipments made in excess of the minimum quantity.

#### Comment 12

Petitioner argues that all shipments to the U.S. made pursuant to Contracts 3 and 4 should be included in the calculation of U.S. price, even those shipments made after the POI. Petitioner argues that the date of sale for these contracts falls within the POI and, thus, all shipments made pursuant to these contracts should be used in the calculation of U.S. price. Alternatively, petitioner argues that there was never a binding commitment, as shown by the fact that the guaranteed quantities were not adhered to and, thus, the date of sale could be considered to be the date of shipment. In this case, only those shipments made during the POI pursuant to these contracts should be included in the calculation of U.S. price.

CEMEX argues that the date of sale for shipments made pursuant to Contract 3 during the period April 1, 1989 — June 30, 1989, fall outside the POI, because the price and quantity terms for such shipments were reached in an oral agreement that occurred before the POI. CEMEX agrees that shipments from July 1 through December 31, 1989, should be included in the calculation of U.S. price, because the date when the price was established for these shipments fell within the POI. CEMEX further argues that the fact that the minimum quantity was not reached is irrelevant, because there was clear intent by the parties to adhere to the minimum quantities.

For Contract 4, CEMEX argues that the price terms were agreed to on a date that precedes the POI. CEMEX also argues that the quantity terms were agreed to during the prior year.

#### DOC Position

We agree with CEMEX's position regarding Contract 3. We verified that the parties had begun performance pursuant to a letter agreement, dated before the POI, that established definite price and minimum quantity terms. Although it is unclear when the parties signed this letter agreement, we consider the price and minimum quantity terms, as set forth in this agreement, to have been established before the POI, because the parties had begun performance pursuant to this agreement before the POI. Furthermore, that the parties did not adhere to the minimum quantity terms during performance of the contract does not

invalidate their intent to establish definite quantity terms as set forth in the letter agreement. As a result, we consider the date of sale for shipments made up to the minimum quantity during the period April 1, 1989 through June 30, 1989, to precede the POI. We, therefore, have not included these sales in our calculations.

We disagree with CEMEX's position regarding Contract 4. CEMEX explained at verification that the parties were adhering to the price and quantity terms of a 1988 purchase agreement during the period July 1, 1989 through March 31, 1989. On April 1, 1989, the parties began performance pursuant to a written amendment to the 1988 purchase agreement that establishes new price and quantity terms. Because the parties established definite price and quantity terms pursuant to this amendment during the POI, we consider the date of sale for Contract 4 to fall within the POI. Accordingly, we have included in our calculations all shipments made pursuant to this contract.

#### Comment 13

Petitioner argues that sales pursuant to CDC Contract 1 should be included in our calculations because the minimum quantity was not met. Petitioner argues that sales made pursuant to CDC's long-term Contract 2 should be included in the POI because there was no definite price term established by a memorandum dated prior to the POI. CEMEX argues that this memorandum did, in fact, establish a definite price term and, thus, only those shipments above the minimum quantity stated in the contract should be included in the POI.

#### DOC Position

We agree with CEMEX. We verified that the parties had formally executed Contract 1 before the POI. We have not included sales pursuant to Contract 1 in our calculations because we have determined that the parties established definite price and quantity terms before the POI. Furthermore, that the parties did not adhere to the quantity terms during performance of the contract does not void their intent to establish definite quantity terms at the time of contract formation (*see*, Comment 12).

For Contract 2, we verified that the memorandum dated prior to the POI establishes a definite price term and simply extended a long-term contract executed by the parties well before the POI. As a result, we consider the date of sale for shipments made pursuant to CDC's Contract 2 to precede the POI.

Accordingly, we have not included such sales in our calculations.

*Comment 14*

CEMEX contends that because a contract with one of Tolteca's customers was executed prior to the POI, sales pursuant to this contract should not be considered in the Department's final determination.

*DOC Position*

We agree with CEMEX. We verified that the parties had established definite price and quantity terms prior to the POI pursuant to this contract. As a result, we have not included in our calculations sales made pursuant to this contract.

*Comment 15*

Petitioner contends that since Apasco cannot establish the exact date when Contract 1 was executed (*i.e.*, signed), the Department should use best information available to determine the U.S. price for Apasco's shipments after the POI. Apasco argues that its methodology for determining the date of sale is in accordance with the Department's original questionnaire.

*DOC Position*

We agree with Apasco. Although the purchase agreement for Contract 1 failed to specify the date when the parties had formally executed (*i.e.*, signed) the contract, we verified that the parties had begun performance pursuant to this purchase agreement, which establishes definite price and quantity terms, before the POI. As a result, we consider the date of sale of Contract 1 to precede the POI and have excluded from our calculations shipments made pursuant to that contract.

*Comment 16*

Petitioner claims that the U.S. price for sales to the United States pursuant to the long term contracts differs from that reflected on the source documents. CEMEX argues that the gross unit prices reported are correct and that petitioner is confused by a line labeled "exfactory price" on the source documents.

*DOC Position*

We verified that the amounts reported were correct, and thus no changes to the reported U.S. prices were made in our final calculations of fair market value.

*Comment 17*

Petitioner argues that since there were two VAT rates applicable in Mexico during the POI, the Department should use the 6 percent rate which was applicable for sales in border zones. Petitioner argues that for overland

shipments to the United States, the 6 percent border zone VAT rate should apply because the export sale would have incurred a 6 percent VAT had it been sold in the border zone before crossing the border. CEMEX argues that the 15 percent VAT rate should be used in calculating VAT on export sales since this is the rate used in virtually all areas of Mexico.

*DOC Position*

The adjustment for VAT is intended to reflect the tax on home market sales. We found that the 15 percent rate applies to almost all of the home market destinations, and the vast majority of CEMEX's home market sales incurred VAT at the 15 percent rate. Therefore, we have determined that the 15 percent rate is the rate which most closely represents the actual VAT experience in the home market.

*Comment 18*

Petitioner notes that VAT was improperly double counted on CDC's computer tape

*DOC Position*

We agree. CEMEX submitted a new computer tape that contains the verified amounts for CDC's VAT. We have used this revised tape for our final determination.

*Comment 19*

Petitioner claims that Apasco's claim for duty drawback on refractory bricks and grinding balls should be denied, because these products are not inputs in the subject merchandise. Furthermore, petitioner argues that the replacement of the bricks and balls represents a capital expense which cannot be apportioned by a simple formula.

Apasco maintains that ground clinker obviously contains portions of refractory bricks and grinding balls. Apasco also states that the Department has verified that it received duty drawback.

*DOC Position*

We agree with Apasco. We verified that Mexican import duties paid by Apasco for refractory bricks and grinding balls used in producing cement were rebated by reason of exportation of the subject merchandise. Therefore, we have allowed Apasco's claim for duty drawback.

*Comment 20*

Petitioner contends that countervailing duty cash deposits paid or reimbursed by Apasco should be deducted from U.S. price. Apasco points out that the Act provides only that U.S. price be increased by the amount of

countervailing duties imposed on the merchandise. Therefore, because no duty has been imposed, Apasco argues that actual duties can be only added to U.S. price once the final duty amount is established.

*DOD Position*

We agree with Apasco. Section 772(d)(1)(D) of the Act authorizes the Department to make an addition to U.S. price for any countervailing duties imposed (*i.e.*, assessed) on the subject merchandise (19 U.S.C. 1677a(d)(1)(D); *Serampore Industries Pvt., Ltd. v. United States*, 675 F. Supp. 1354 (1987)). In this case, the subject merchandise will not be subject to the imposition of simultaneous countervailing duties and antidumping duties until the Department completes any future administrative reviews. Therefore, no adjustment to U.S. price is warranted at this time.

In accordance with Article VI.5 of the General Agreement on Tariffs and Trade, however, it is the Department's consistent practice to deduct the amount of the export subsidy from the dumping deposit when final countervailing duty and antidumping orders are in effect (see, Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19092 (1984)). Therefore, if the Department publishes an antidumping duty order in this case, the Department will instruct the U.S. Customs Service to reduce the dumping deposit by the countervailing duty deposit attributable to the export subsidy found in the most recent countervailing duty administrative review covering the subject merchandise (see, Final Results of Countervailing Duty Administrative Review: Portland Hydraulic Cement and Cement Clinker from Mexico, 53 FR 18325 (1988)).

*Comment 21*

Petitioner argues that CEMEX's home market sales to related parties should be included in the calculation of FMV if they are at prices equal to or greater than the prices charged to unrelated customers.

*DOC Position*

We agree. In accordance with 19 CFR 353.45(a), we have included home market sales to related parties because they were at or above the prices charged to unrelated customers.

*Comment 22*

Petitioner argues that for CEMEX and Apasco the Department should follow

its practice of disallowing discounts and rebates to related home market purchasers. CEMEX argues that if the Department includes sales to related parties in its calculation of FMV, it should also include discounts and rebates to related customers as well.

#### *DOC Position*

We agree with CEMEX. In determining whether to use related party transactions in the home market for fair value comparisons we compared the prices to related parties, net of all rebates and discounts, to the prices to unrelated parties, net of all discounts and rebates. For CEMEX, we determined that such net prices to related parties are at, or greater than, the net prices to unrelated parties. Therefore, in our calculations to determine foreign market value for CEMEX, we have likewise deducted all discounts and rebates from the prices to both related and unrelated parties.

For Apasco, we determined that such net prices to related parties are less than the net prices to unrelated parties. Therefore, we have not included sales to related parties in our calculations to determine foreign market value for Apasco.

#### *Comment 23*

Petitioner argues that CEMEX's ESP sales must be reduced by the increased amount of discounts and rebates found at verification. CEMEX claims that the discounts and rebates were reported accurately. There was a slight difference between the reported amounts and the company records, but CEMEX claims that the difference was due to quantity adjustments and to discounts and rebates for products not used in the calculation of U.S. price.

#### *DOC Position*

We agree CEMEX. The difference found was negligible, and thus we have made no additional adjustments.

#### *Comment 24*

Petitioner argues that the Department should not allow any deductions for discounts and rebates for CEMEX's home market sales where the customers purchase pozzolanic cement as well as Types I and II cement, because CEMEX has not reported sales of pozzolanic cement and has not explained how the discounts and rebates have been allocated. CEMEX claims that the allocation method, which was verified by the Department, was accurate.

#### *DOC Position*

We agree with CEMEX. We verified that the allocation method was accurate

and, thus, have allowed the claimed adjustment.

#### *Comment 25*

Apasco claimed that a commission was paid to a related party on U.S. sales. Petitioner claims that the Department should deduct this commission. Apasco argues that it has established that the commissionaire is related to Apasco and that the commission therefore represents simply an intracorporate transfer.

#### *DOC Position*

We verified Apasco's submission regarding corporate structure, including the relationship of the commissionaire. We are not deducting the related party commission from U.S. price, because we consider it to be an intracorporate transfer. Likewise, in none of the sales used to establish FMV did we make an allowance for commissions paid to related parties.

#### *Comment 26*

Petitioner argues that the Department should deduct all movement charges from U.S. price, as well as brokerage and handling fees for all U.S. sales by CDC. Petitioner also argues that the Department must recalculate U.S. packing costs for BCW, one of CEMEX's U.S. affiliates, so that such costs represent the packing costs as verified by the Department.

#### *DOC Position*

We agree with petitioner and have deducted all movement charges, as well as brokerage and handling fees, for all U.S. sales by CDC. We have used the revised packing costs submitted by CEMEX in our calculations, because these packing costs represent the amounts we verified.

#### *Comment 27*

Petitioner notes that the law makes no provision for deducting foreign inland freight from FMV and that inland freight on certain home market sales by CEMEX and Apasco was incurred prior to the date of sales. Therefore, petitioner asserts that home market inland freight that appears to be incurred before the date of sale should not be deducted from the FMV.

CEMEX and Apasco argues that, consistent with two court cases (*see, AOC International, Inc., et al. v. United States*, Slip Op. 89-127 (CIT, September 18, 1989) and *Smith-Corona Group, SCM Corp. v. U.S.* 713, F.2d 1588, 1572 (CAFC, 1983)), inland freight charges should be deducted from both U.S. price and FMV because it is the only way to make an "apples-to-apples" comparison.

#### *DOC Position*

We agree with CEMEX and Apasco. We have deducted from the U.S. price inland freight which represents movement expenses from the plant to the storage facility. Therefore, to ensure an "apples-to-apples" comparison, we have deducted movement expenses from the plant to the storage pick-up point on home market sales in our determination of FMV.

#### *Comment 28*

Petitioner contends that inland freight charges billed by a related freight company should be allowed only if they represent arms-length transactions. Apasco maintains that the rates charged Apasco by the related freight company were compared with those of an unrelated supplier and deemed to be at arm's length.

#### *DOC Position*

We agree with Apasco. We have verified that the freight price charged Apasco by the related company is at least as much as that charged by unrelated suppliers and, therefore, was at arm's length. As a result, we have used the related party freight charges.

#### *Comment 29*

Petitioner claims that, as best information, the Department should recalculate Apasco's claim for insurance to account for the expected rebate of a portion of the premiums paid during the POI. Apasco argues that the Department has verified information concerning insurance and, therefore, need not use best information available.

#### *DOC Position*

As noted in the verification report, Apasco was unable to document rebate of insurance premiums. Furthermore, the effect of adjusting for the expected rebate would be negligible. Therefore, we have made no adjustments to Apasco's claim for insurance.

#### *Comment 30*

Petitioner maintains that CEMEX's credit expense on ESP sales should be based on the home market interest rate because CEMEX's U.S. subsidiaries did not borrow money in the U.S. Petitioner further argues that since CEMEX had both peso- and dollar-denominated debt, credit expense for purchase price sales should be calculated based on either CEMEX's interest rate for peso-denominated debt or the average of CEMEX's peso and dollar interest rates.

CEMEX argues that the peso interest rate reflects a factor to compensate for inflation in Mexico and that this factor

is irrelevant to the opportunity cost of holding accounts receivable on dollar-denominated sales. Therefore, the dollar interest rate paid by CEMEX should apply to its dollars-denominated sales.

#### *DOC Position*

We disagree with petitioner. In order to calculate credit costs, we seek to determine a respondent's actual borrowing experience. Because CEMEX received U.S. dollar-denominated loans during the POI, we used CEMEX's dollar-denominated interest rate to calculate credit costs for CEMEX's purchase price and ESP sales. This position is consistent with our long-standing administrative practice. See, *Porcelain-on-Steel Cooking Ware from Mexico*; Final Results of Antidumping Duty Administrative Review 55 FR 21061 (1990).

For a small number of purchase price sales, CEMEX received partial, rather than full, payment. Petitioner proposes that the Department reduce U.S. price by the highest percentage that the amount received by CEMEX fell short of an invoiced amount. CEMEX states that prior to verification, it notified the Department in writing that these transactions had not been paid and provided the Department with complete and accurate information.

#### *DOC Position*

For the transaction where full payment had not been received, we calculated credit expenses using CEMEX's data on the highest average number of days accounts were outstanding for the CEMEX affiliates with purchase price sales. We consider this methodology to be a reasonable representation of credit experience and have used it as best information in our final determination.

#### *Comment 32*

Petitioner contends that the basis for calculating U.S. inventory carrying costs should include the total cost for the U.S. affiliate to purchase the cement, in addition to transportation costs incurred to transport the cement to the terminal. Petitioner argues that because CEMEX did not report when the merchandise entered into the inventories of its U.S. affiliates, as best information available, the Department should use the time between the date of production and the date of sale to the first unrelated purchaser to calculate the time that the cement remained in U.S. inventory. Petitioner further claims that since CEMEX's U.S. affiliates do not borrow money in the U.S., and CEMEX has not

claimed that it maintains separate accounts for dollar and peso loans, the Department should recalculate CEMEX's inventory carrying costs using the average of CEMEX's peso and dollar interest rates.

CEMEX submits that it has reported the time inventory destined for the U.S. market was held in Mexico and the time it was held in the United States. Finally, CEMEX argues that using a foreign currency denominated rate for the time inventory is owned by a U.S. subsidiary makes sense only when a dollar rate is not available.

#### *DOC Position*

We found that CEMEX borrows in both dollars and pesos. Therefore, we have adhered to the Department's standard practice which is explained below to calculate the inventory carrying cost. In this case, for the period between production and entry into the United States, we have used the home market weighted average short term interest rate reported by CEMEX. For the period from entry into the United States until sale to the first unrelated party, we have used the verified U.S. interest rate. Based on CEMEX's corporate organization and record keeping, we consider merchandise to enter the inventory of the U.S. subsidiary when it crosses the U.S. border. We used the transfer price reported by CEMEX as the basis for the calculation.

#### *Comment 33*

We found at verification that Cementos Hidalgo incurs a bank charge on both home market and U.S. sales for checks issued outside the Monterrey metropolitan area, as well as for exchanging dollars to pesos. Petitioner argues that the Department should deduct the unreported bank charge on U.S. sales but not the unreported bank charge on home market sales. Petitioner argues that we should apply the highest bank fee rate verified to all U.S. sales as best information available.

#### *DOC Position*

We agree. As best information available, we have applied the highest verified bank fee rate to all U.S. sales and have not deducted the bank fee from the home market sales because Cementos Hidalgo did not report this fee, and we do not know to which sales the fee would apply.

#### *Comment 34*

Petitioner argues that the Department should increase the credit expense on all

Cementos Hidalgo's U.S. sales because the reported credit days were inaccurate for all the sales examined during verification. As best information available, petitioner suggests that the Department use the longest period of time verified for all sales. Petitioner also argues that Cementos Hidalgo's home market credit expense should be denied because it did not use actual credit days in its calculation.

#### *DOC Position*

We agree that the U.S. credit expense should be increased for all U.S. sales. We found at verification that the number of days for which credit was extended was underreported on all U.S. sales. Therefore, in our calculations, we used the verified number of credit days for the sales which we verified. As best information available, we used the average credit period of the verified sales for the credit calculation of all other U.S. sales. With regard to the home market credit expense, we disagree with petitioner. Use of an average payment period is acceptable if it is not possible, or if it is too complex, to report actual payment days. We have determined in this case that the use of an average payment period on home market sales is acceptable, because it was too complex to report actual payment days due to the number of home market sales.

#### *Comment 35*

Petitioner argues that the Department should disallow Apasco's claimed adjustment for costs incurred as a result of maintaining portable silos at the sites of construction company customers. Petitioner claims that silo maintenance, which constituted all of the claim, was not part of the negotiated price with these customers. Furthermore, petitioner claims that Apasco has not shown that maintenance expenses arose from the use of cement sold during the POI. Apasco maintains that the record verified by the Department clearly establishes the link between the maintenance expenses and the sales during the POI.

#### *DOC Position*

We have allowed Apasco's claim for post-sale silo maintenance expenses to home market customers since it is an essential term of the sales. Moreover, based on Apasco's records, we find that it would be unreasonable, if not impossible, to precisely tie its maintenance expenses directly to cement sold in the POI. Therefore, we

have accepted Apasco's allocation methodology.

*Comment 36*

Petitioner argues that Apasco's claim for a circumstance of sale adjustment for technical services should be disallowed because the technical services are not directly related to sales during the POI. In particular, petitioner cites Apasco's claim that home market technical services were for seminars. Citing the court's ruling in *Rhone Poulenc S.S. v. United States*, 592 F. Supp. 1318, 1335 (CIT 1984), petitioner maintains that seminars are generally for promoting good will and future sales and, as such, do not constitute technical services for independent services. Apasco proposes that the Department treat technical services equally in both markets.

*DOC Position*

We verified that Apasco incurred expenses for seminars which they claimed as a circumstance of sale adjustment for technical services. Since we found no evidence in either market of requests from customers for technical services, and since Apasco was not able to show that the customer visits were made at the request of the customers, we deem the claimed technical service expenses in both markets to have been generally oriented toward promoting good will and future sales, and, as such, are not directly related to the sale of the subject merchandise. Therefore, we are denying Apasco's claimed adjustment for technical services.

**Continuation of Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue the suspension of liquidation of all entries of gray portland cement and clinker from Mexico as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after April 12, 1990, the date of publication of the preliminary determination in the *Federal Register*. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of the subject merchandise from Mexico exceed the U.S. price, as shown below.

Manufacturer/Producer/Exporter	Margin percentage
CEMEX, S.A. ....	58.38
Apasco, S.A. de C.V. ....	53.26
Cementos Hidalgo, S.C.L. ....	3.69
All others .....	58.05

If the Department publishes an antidumping duty order covering the subject merchandise, the Department will instruct the U.S. Customs Service to reduce the dumping deposit by the amount of the countervailing duty deposit attributable to the export subsidies found in the most recent countervailing duty administrative review covering the subject merchandise. See, *Portland Hydraulic Cement and Cement Clinker from Mexico, supra*. This suspension of liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine within 45 days from the date of this final determination whether there is material injury, or the threat thereof, to the domestic industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on gray portland cement and clinker from Mexico entered, or withdrawn from warehouse, for consumption or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: July 10, 1990.

Francis J. Sailer,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-16693 Filed 7-17-90; 8:45 am]

BILLING CODE 3510-DS-M

**National Technical Information Service**

**Government-Owned Inventions; Availability for Licensing**

July 10, 1990.

The invention listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

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Please cite the number and title of inventions of interest.

Douglas J. Campion,

*Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.*

**DEPARTMENT OF AIR FORCE**

- SN 6-338,198  
(4,852,452) Defense to Laser Light Irradiation
- SN 6-789,862  
(4,837,683) Hidden Fault Bit Apparatus For A Self-Organizing Digital Processor System
- SN 6-884,691  
(4,863,874) Method For Detecting Phosphatidylinositol Through Binding To Concanavalin A
- SN 6-905,439  
(4,838,029) Externally Vaporizing System For Turbine Combustor
- SN 6-928,356  
(4,823,357) Diffraction Limited Dichroic Combiner Diode Laser
- SN 7-011,085  
(4,828,774) Porous Ceramic Bodies
- SN 7-012,517  
(4,851,847) Method For Eliminating Self-Screening Noise Jamming In Radar Systems
- SN 7-052,841  
(4,854,190) Continuously Variable Gear Drive Transmission
- SN 7-059,468  
(4,842,607) Accurate Hand Movement Assistance
- SN 7-060,882

- (4,834,945) Easily Testable High Speed Architecture For Large Rams  
SN 7-063,369  
(4,828,207) Fluid Lock  
SN 7-063,378  
(4,826,553) Method For Replicating An Optical Element  
SN 7-068,977  
(4,835,391) Cerenkov Electrooptic Shutter  
SN 7-070,499  
(4,836,858) Ultrasonic Assisted Paint Removal Method  
SN 7-085,094  
(4,835,246) Pendant Benzazole Rigid-Rod Aromatic Heterocyclic Polymer  
SN 7-089,652  
(4,845,286) Acetylene Terminated Aromatic Amide Monomers  
SN 7-090,500  
Sequential Rapid Communication Visual Displays  
SN 7-093,345  
(4,855,508) Energetic Diethers And Process For Their Preparation  
SN 7-100,385  
(4,838,584) Quick Disconnect Duct Coupler  
SN 7-107,185  
(4,841,834) Command Operated Liquid Metal Opening Switch  
SN 7-109,810  
(4,852,347) Advanced Composite Polar Boss  
SN 7-125,647  
(4,834,945) High Resolution Cinephotographics System Pressure Vessel  
SN 7-128,842  
(4,832,760) Method for Refining Microstructures of Prealloyed Titanium Powder Compacts  
SN 7-137,487  
(4,825,149) Conformal Ground Referenced Self-Integrating Electric Field Sensor  
SN 7-138,238  
(4,841,150) Reflection Technique For Thermal Mapping Of Semiconductors  
SN 7-158,447  
(4,853,163) Method of Controlling Discharge of Stored Electric Charge in Plastic Objects and Forming Lichtenberg Figures in Plastic Objects  
SN 7-159,868  
(4,840,026) Bank Clamp Apparatus  
SN 7-160,736  
(4,855,749) Opto-Electronic Vivaldi Transceiver  
SN 7-181,135  
(4,828,729) Molybdenum Disulfide Molybdenum Oxide Lubricants  
SN 7-183,200  
(4,822,834) Vibration Damping Composition Suitable for Outer Space Temperature Variations  
SN 7-187,143  
(4,825,826) Automatic Prestart Or Post Shutoff Engine Lubricator  
SN 7-197,935  
(4,830,479) Rotating Doppler Frequency Shifter  
SN 7-198,801  
(4,851,053) Method To Produce Dispersion Strengthened Titanium Alloy Articles With High Creep Resistance  
SN 7-198,804
- (4,828,793) Method To Produce Titanium Alloy Articles With High Fatigue And Fracture Resistance  
SN 7-213,007  
(4,842,631) Method Of Making Carbon Dioxide And Chlorine Free Fluoride-Based Glass  
SN 7-241,179  
(4,832,931) Synthesis of Tetrafluorohydrazine  
SN 7-243,537  
(4,826,603) Hydrocarbon Group-Type Analyzer System  
SN 7-255,803  
(4,842,045) Expandable Radiator  
SN 7-270,148  
(4,851,055) Method of Making Titanium Alloy Articles Having Distinct Microstructural Regions Corresponding to High Creep and Fatigue Resistance  
SN 7-310,488  
(4,851,193) High Temperature Aluminum-Base Alloy  
SN 7-642,907  
(4,849,719) Low Loss Electro-Optic Modulator Mount
- DEPARTMENT OF ARMY**  
SN 7-239,814  
Torque Calibrator  
SN 7-260,425  
Dose and Dose Rate Sensor For The Pocket Radiac  
SN 7-277,575  
Method of Making A Cathode From Tungsten and Iridium Powders Using A Strontium Peroxide Containing Material As The Impregnant  
SN 7-348,752  
ByPass Electronic Emergency Fuel System  
SN 7-348,753  
Planar Stock Wave Generator and Enhancer Device  
SN 7-392,866  
Fast Optical Switch and Limiter Using Quantum Size Effect in Metal Grain Composites  
SN 7-417,132  
Temperature Compensated Crystal Oscillator (TCXO) With Improved Temperature Compensation  
SN 7-420,801  
Improved Electrical Cable for Vehicles  
SN 7-422,161  
Extraction And Recovery Of Plasticizers From Solid Propellants And Munitions  
SN 7-425,539  
Method Of Making A Transducer From a Boule Of Lithium Tetraborate and Transducer So Made  
SN 7-425,541  
Security Drain Plug For Armor And The Like  
SN 7-425,548  
Periodic Permanent Magnetic Structure For Acceleration Charged Particle  
SN 7-425,549  
FR Phase Shifter  
SN 7-428,792  
Lightning Protection Apparatus For RF Equipment And The Like  
SN 7-431,277  
Heterogeneous Composite And Method Of Making  
SN 7-431,278  
Fabrication Of Permanent Magnet Toroidal Rings
- SN 7-436,402  
Permanent Magnet Field Sources Of Conical Orientation  
SN 7-436,406  
Permanent Magnet Structure For Use In Electric Machinery  
SN 7-436,408  
Adjustable Twister  
SN 7-436,503  
Enhanced Magnetic Field Within Enclosed Cylindrical Cavity  
SN 7-437,401  
Electron Paramagnetic Resonance Instrument With Superconductive Cavity  
SN 7-439,135  
Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Mixture of Barium Peroxide and a Coated Emitter as the Impregnant  
SN 7-451,065  
Cable Tester  
SN 7-451,698  
Method of Growing Industrial Grade Diamond  
SN 7-451,699  
Method of Preparing a Thin Diamond Film  
SN 7-459,629  
Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Quarternary Compound As The Impregnant  
SN 7-461,943  
A Real-Time Rejection Circuit To Automatically Reject Multiple Interfering Hopping Signals While Passing A Lower Level Desired Signal  
SN 7-466,142  
Laser Controlled Semiconductor Armature For Electromagnetic Launchers  
SN 7-468,335  
Method of Making a Cathode From Tungsten Powder  
SN 7-474,976  
Microwave Transmission Line And Method Of Modulating The Phase Of A Signal Passed Through Said Line  
SN 7-474,976  
Microwave Transmission Line and Method Of Modulating The Phase Of A Signal Passed Through Said Line  
SN 7-436,407  
Enhanced Magnetic Field Within Enclosed Annular Cavity
- DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
SN 5-932,501  
(4,179,464) Preparation of N-(Phosphonoacetyl)-L-Aspartic Acid  
SN 6-843,727  
(4,833,761) Pertussis Toxin Gene: Cloning and Expression of Protective Antigen  
SN 6-854,493  
(4,892,829) A Human Plasma Cell Line Having Rearranged-Proto-Oncogene  
SN 6-888,059  
(4,902,495) IGE FC Directed Delivery System (conjugate of a toxin and immunoglobulin E; method of detecting mast cell tumors)  
SN 6-911,227  
(4,892,827) Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin With Low Side Effects

- SN 6-911,863  
(4,861,710) Recombinant DNA Clone Encoding Laminin Receptor
- SN 6-932,084  
(4,868,107) Method for Detecting Antibodies Against Neuropeptides and Drugs in Human Body Fluid
- SN 7-019,000  
(4,866,782) Malarial Immunogen (T-cell epitope of the CS protein of *P. falciparum*)
- SN 7-062,422  
(4,882,346) Chemical Differentiating Agents
- SN 7-067,420  
(4,892,814) Diagnostic Test For Creutzfeldt-Jakob Disease
- SN 7-094,597  
(4,877,774) Administration of Steroid Hormones by direct contact with mucosa
- SN 7-101,970  
(4,857,187) Multistage Mixer-Settler Centrifuge
- SN 7-114,508  
(4,885,236) Immortalized Human Cells Lines (non-tumorogenic human bronchial epithelial or mesothelial cell lines)
- SN 7-133,878  
(4,911,690) Treatment or Diagnosis By Endoscopic Administration Into The Lymphatics
- SN 7-166,825  
(4,900,748) Novel Carbamates Related to (+)-Physostigmine as Cholinergic Agents (for treatment of Alzheimer's disease, myasthenia gravis, organophosphate poisoning, glaucoma)
- SN 7-168,088  
HIV Subunit Vaccine—Using Immunogenic Sequences of gp120 Envelope Protein
- SN 7-190,627  
(4,889,137) Method and Device for Improved Use of Heart/Lung Machine
- SN 7-217,824  
(4,894,228) Vaccine Against Hepatitis A Virus
- SN 7-255,759  
Strip-Comb Dot Immunobinding Assay for Rapid Screening of Monoclonal Antibodies
- SN 7-269,407  
The Design and Construction of Non-Infectious Retroviral Mutants Deficient in Viral RNA
- SN 7-285,489  
Novel Lymphokine/Cytokine Genes
- SN 7-290,279  
(4,908,322) Derivatization of Amines for Electrochemical Detection
- SN 7-304,281  
DNA Encoding A Growth Factor Specific for Epithelial Cells
- SN 7-305,331  
Pyroelectric Calorimeter (for measuring metabolic events in living cells)
- SN 7-306,612  
Method for Detecting Inhibitors of TAT Protein
- SN 7-308,282  
Type A Platelet-Derived Growth Factor Receptor Gene
- SN 7-315,911  
(4,887,884) Method of the Treatment of Cancer by Use of the Cooper Complex of S-(Methylthio)-DL-Homocysteine
- SN 7-35,908  
Pulse Oximeter for Diagnosis of Dental Pulp Pathology
- SN 7-377,334  
A Process For the Purification of C1-Inhibitor
- SN 7-388,886  
Slowly Dissociating (Tight Binding) Dopamine, Serotonin or Norepinephrine Reuptake Inhibitors as Cocaine, Amphetamine and Phencyclidine Antagonists
- SN 7-392,308  
(4,503,142) Open Reading Frame Vectors
- SN 7-429,287  
The Design and Construction of Non-Infectious Human Retroviral Mutants Deficient in Genomic RNA
- SN 7-431,568  
New Anti-HIV Compounds Belonging to Aurintricarboxylic Acid
- SN 7-432,126  
Anti-Platelet Monoclonal Antibody
- SN 7-432,380  
Novel Monoclonal Antibody Against Human Platelets
- SN 7-441,516  
A Sensitive Method for Localizing Chromosomal Breakpoints
- SN 7-441,521  
An Aerosol Preparation of Glutathione and A Method for Augmenting Glutathione Level in Lungs (for some pulmonary dysfunctions, disorders or diseases)
- SN 7-450,162  
A New Member of the Nuclear Hormone Receptor Superfamily and a cDNA Clone Thereof
- SN 7-450,252  
Tumor-Specific Molecules for Controlling Cancer
- SN 7-453,793  
Method of Treating Ocular Diseases By Periocular Administration of Cyclosporine A or G
- SN 7-454,162  
An Improved Toxin for Construction of Immunotoxins
- SN 7-454,171  
Novel Method For Amplifying Unknown Nucleic Acid Sequences (uses polymerase chain reaction)
- SN 7-459,635  
Target-Specific Cytotoxic, Recombinant Pseudomonas Exotoxin
- SN 7-487,716  
Antigenic Proteins of *Borrelia burgdorferi*
- SN 7-488,105  
Endogenous, Suramin-Induced, Sulfated Glycosaminoglycans As Anti-Cancer Agents in Humans
- SN 7-492,468  
O6-Substituted Guanine Compounds and Methods for Depleting O6-Alkylguanine-DNA Alkyltransferase Levels
- DEPARTMENT OF COMMERCE**
- SN 7-012,700  
(4,907,186) Data Direct Ingest System
- SN 7-244,762  
(4,860,803) Continuous Nitrox Mixer
- SN 7-259,088  
(4,907,237) Optical Feedback Locking of Semiconductor Lasers
- DEPARTMENT OF INTERIOR**
- SN 7-094,976  
(4,866,985) Bucket Wheel Assembly for a Flow Measuring Device
- SN 7-229,408  
(4,872,909) Process for Acid Leaching of Manganese Oxide Ores Aided by Hydrogen Peroxide
- SN 7-234,768  
(4,891,576) Ground-Based Transmission Line Conductor Motion Sensor
- SN 7-248,220  
(4,886,752) Microbial Production of Ultrafine-Grained Magnetite
- SN 7-349,736  
(4,903,163) Directional Harmonic Overcurrent Relay Device
- SN 7-428,699  
Selenate Removal from Waste Water
- SN 7-429,326  
Polymer Bead Containing Immobilized Metal Extractant
- SN 7-434,062  
Method of Mining a Mineral Deposit Seam
- SN 7-447,458  
Methods of High Frequency Tissue Regeneration, Regeneration of Herbicide-Tolerant Populus Plants Therewith, and the Herbicide-Tolerant Plants Made Thereby
- DEPARTMENT OF TRANSPORTATION**
- SN 5-597,557  
(4,006,932) Inflatable Drag Reducer for Land Vehicles
- DEPARTMENT OF AGRICULTURE**
- SN 6-818,567  
(4,871,615) Temperature-Adaptable Textile Fibers and Method of Preparing Same
- SN 7-055,476  
(4,851,291) Temperature Adaptable Textile Fibers and Method of Preparing Same
- SN 7-058,054  
(4,888,282) Synthetic Gene For Acyl Carrier Protein
- SN 7-063,357  
(4,871,370) Stable Crystalline Cellulose III Polymorpha
- SN 7-071,948  
(4,895,717) Revertant Serotype 1 Marek's Disease Vaccine
- SN 7-071,949  
(4,895,718) Serotype 2 Marek's Disease Vaccine
- SN 7-072,201  
(4,911,952) Encapsulation by Entrapment Within Matrix Unmodified Starches Having Various Proportions of Linear and Branched Chain Components
- SN 7-072,205  
(4,859,377) Starch Encapsulation of Biocontrol Agents
- SN 7-093,951  
(4,880,632) Prevention of Fescue Toxicosis
- SN 7-114,952  
(4,902,333) Control of Undesirable Vegetation
- SN 7-140,470  
(4,835,818) Device For Differential Ginning
- SN 7-155,442  
(4,885,387) Production of High Yields of Glycolic and Oxalic Acids from Polysaccharide-Containing Materials
- SN 7-173,910

- (4,880,747) Method for Producing Trichothecenes  
SN 7-186,990
- (4,891,217) Persistent Attractants for the Mediterranean Fruit Fly, the Method of Preparation and Method of Use  
SN 7-192,083
- (4,886,746) Heat-Stable, Salt-Tolerant Microbial Xanthanase & Method of Producing Same  
SN 7-207,588
- (4,871,556) Inhibition of Warmed-Over Flavor Preserving of Uncured Meat Containing Materials  
SN 7-207,591
- (4,871,537) 6,12-Dimethylpentadecan-2-One and Its Use in Monitoring and Controlling the Banded Cucumber Beetle  
SN 7-229,420
- (4,900,324) Agents for Non-Formaldehyde Durable Press Finishing and Textile Products Therefrom  
SN 7-229,877
- (4,860,529) Shaking Mechanism for Fruit Harvesting  
SN 7-240,304
- (4,900,568) Process and Apparatus for Extrusion Utilizing Force Measurements Means  
SN 7-247,546
- (4,877,607) Attractants For Dacus Latifrons, The Malaysian Fruit Fly  
SN 7-248,744
- (4,878,895) Improvements In In-Vivo Stimulation, Collection, and Modification of Peritoneal Macrophage  
SN 7-297,786
- (4,864,905) Multiple Bandmill for Making A Plurality of Sawlines in the Same Longitudinal Plane at One Time  
SN 7-305,316
- Device for Regulating Luminous Flux of Battery Powered Headlamp  
SN 7-341,088
- Plant Patent—An Asexually Produced Variant of Douglas Fir  
SN 7-371,779
- (4,908,238) Temperature Adaptable Textile Fibers and Methods of Preparing Same (Cross Reference To Related Applications)  
SN 7-450,192
- Coatings for Substrates Including High Moisture Edible Substrates  
SN 7-454,491
- Molluscicidal B-Carboline Carboxylic Acids and Methods Using the Same  
SN 7-459,405
- Estimation of Fumigant Residues in Commodities  
[FR Doc. 90-16717 Filed 7-17-90; 8:45 am]  
BILLING CODE 3510-04-M

## COMMISSION ON RAILROAD RETIREMENT REFORM

### Public Meeting of the Commission

**ACTION:** Meeting.

**SUMMARY:** The Commission on Railroad Retirement Reform ("the Commission") will hold a public meeting on Monday,

August 6, and continuing on Tuesday, August 7, 1990. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

**DATE, TIME, AND PLACE:** Monday, August 6, 9:00 a.m. to 6:00 p.m. and reconvening on Tuesday, August 7, 1990, at 9:00 a.m. to 4:00 p.m. The meeting will be held at the Association of American Railroads, 50 F Street, NW., Washington, DC (4th Floor Conference Center).

**AGENDA:** The open meeting will discuss the final report.

**FOR ADDITIONAL INFORMATION:** Contact Maureen Kiser, 202-254-3223, Commission on Railroad Retirement Reform, 1111 18th Street, NW., Suite 808, Washington, DC 20036.

**SUPPLEMENTARY INFORMATION:** See Federal Register, Volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,  
Executive Director.

[FR Doc. 90-16751 Filed 7-17-90; 8:45 am]

BILLING CODE 6820-63-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 the Federative Republic of Brazil

July 13, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, 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) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted to recredit

unused carryforward applied to the previous restraint period.

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 54 FR 50797, published on December 11, 1989). Also see 55 FR 12254, published on April 2, 1990.

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.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 13, 1990

Commissioner of Customs,  
Department of the Treasury, Washington,  
D.C. 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of March 27, 1990 from the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1990 and extends through March 31, 1991.

Effective on July 20, 1990, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted Twelve-Month Limit <sup>1</sup>
Sublevels in the group: 338/339/638/639.....	1,011,240 dozen
347/348.....	730,340 dozen
607.....	3,312,767 kilograms

<sup>1</sup> The limits have not been adjusted to account for any imports exported after March 31, 1990.

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,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-16771 Filed 7-17-90; 8:45 am]

BILLING CODE 3510-DR-M

**Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China**

July 13, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 16, 1990.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11851 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 200, 338/339, 338-S/339-S, 342, 347/348, 369-L, 369-S and 863-S are being increased by application of swing, reducing the limits for Categories 300/301, 607 and 846 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 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 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.

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 13, 1990.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you 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 China and exported during the period January 1, 1990 through December 31, 1990.

Effective on July 16, 1990 you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit <sup>1</sup>
Levels not in a Group:	
200 .....	576,952 kilograms.
300/301 .....	3,188,573 kilograms.
338/339 .....	2,197,083 dozen of which not more than 1,640,604 dozen shall be in Categories 338-S/339-S <sup>2</sup> .
342 .....	244,901 dozen.
347/348 .....	2,237,571 dozen.
369-L <sup>3</sup> .....	2,625,449 kilograms.
369-S <sup>4</sup> .....	603,836 kilograms.
607 .....	2,564,475 kilograms.
846 .....	74,482 dozen.
863-S <sup>5</sup> .....	7,589,883 numbers.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1989.

<sup>2</sup> Category 338-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339-S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

<sup>3</sup> Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

<sup>4</sup> Category 369-S: only HTS number 6307.10.2005.

<sup>5</sup> Category 863-S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-16772 Filed 7-17-90; 8:45 am]

**BILLING CODE 3510-DR-M**

**Amendment of Visa Requirements To Include Coverage of Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Turkey**

July 13, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending visa requirements.

**EFFECTIVE DATE:** July 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11851 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing visa arrangement between the Governments of the United States and the Republic of Turkey is being amended to include the coverage of Categories 410/624 and 448.

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 54 FR 50797, published on December 11, 1989). Also see 52 FR 6859, published on March 5, 1987.

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 13, 1990.

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 2, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey, for which the Government of the Republic of Turkey has not issued an appropriate visa.

Effective on July 20, 1990, you are directed to amend further the directive of March 2, 1987 to include coverage of wool and man-made fiber textile products in Categories 410/624 and 448, produced or manufactured in Turkey and exported from Turkey on and after July 1, 1990. Merchandise in merged Categories 410/624 must be accompanied by either the correct merged category or the correct category corresponding to the actual shipment.

Merchandise in Categories 410/624 and 448 which is exported from Turkey prior to July 1, 1990 shall not be subject to visa requirements.

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,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-16774 Filed 7-17-90; 8:45 am]

**BILLING CODE 3510-DR-M**

### Request for Public Comments on Bilateral Textile Consultations with the Government of the Philippines

July 11, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATES:** July 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nyugen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

**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).

On June 28, 1990, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Non-cotton Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, the Government of the United States requested consultations with the Government of the Philippines with respect to cotton sheets in Category 361.

The purpose of this notice is to advise that pending agreement on a mutually satisfactory solution concerning Category 361, the Government of the United States has decided to control imports during the ninety-day consultation period which began on June 28, 1990 and extends through September 25, 1990.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 361, produced or manufactured in the Philippines and exported during the prorated period beginning on September 26, 1990 and extending through December 31, 1990, of not less than 256,243 numbers.

A summary market statement concerning Category 361 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 361, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 361. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the *Federal Register*.

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 54 FR 50797, published on December 11, 1989).

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

#### Market Statement

#### Category 361—Cotton Sheets

Philippines, June 1990.

#### Import Situation and Conclusion

U.S. imports of cotton sheets, Category 361, from the Philippines reached 1,004,502 units in the year ending April 1990, 31 percent above the 767,602 units imported a year earlier. During the first four months of 1990, the Philippines shipped 539,206 units, three and one-half times their January-April

1989 level and 87 percent of their total calendar year 1989 level. The Philippines became the third largest supplier of cotton sheets accounting for 9 percent of total Category 361 imports during the January-April 1990 period.

The sharp and substantial increase of Category 361 imports from the Philippines is causing a real risk of disruption in the U.S. market for cotton sheets.

#### Import Penetration and Market Share

During 1987 and 1988 U.S. cotton sheet producers retained market share as imports and production increased. However, during the first three quarters of 1989, U.S. production dropped 12 percent below the January-September 1988 level while imports increased 15 percent during the same period.

As a result of the increase in imports in 1989 the domestic producers' share of the cotton sheet market dropped 5 percentage points, falling from 74 percent during January-September 1988 to 69 percent during January-September 1989, the lowest level on record. During this same period the ratio of imports to domestic production increased from 35 percent to 46 percent.

#### Duty-Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 361 cotton sheet imports from the Philippines during 1990 entered under HTSUSA numbers 6302.21.2030, printed napped sheets and 6302.21.2040, printed sheets, not napped other than trimmed, etc. These cotton sheets are being entered at duty-paid landed values well below U.S. producers' prices for comparable sheets.

#### Committee for the Implementation of Textile Agreements

July 11, 1990.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Non-cotton Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 18, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 361, produced or manufactured in the Philippines

and exported during the ninety-day period which began on June 28, 1990 and extends through September 25, 1990, in excess of 284,158 numbers<sup>1</sup>.

Textile products in Category 361 which have been exported to the United States on and after January 1, 1990 shall remain subject to the Group II limit established for the period January 1, 1990 through December 31, 1990.

Textile products in Category 361 which have been exported to the United States prior to June 28, 1990 shall not be subject to the ninety-day limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-16694 Filed 7-17-90; 8:45 am]

BILLING CODE 3510-DR-M

### Temporary Denial of Entry of Textile and Apparel Products Exported From Tanzania

July 13, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**EFFECTIVE DATE:** August 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, 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 (42 FR 1453; Executive Order 12475 of May 9, 1984 (49 FR 19955); section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In order to facilitate the equitable and efficient implementation of textile agreements, the Committee for the Implementation of Textile Agreements (CITA) is presently reviewing possible cases of transshipment of textile and apparel products in circumvention of textile agreements from a number of sources. The purpose of this notice is to advise the public that CITA reserves its authority to take action on this matter under Section 204 of the Agricultural Act of 1956.

Information has become available indicating that textile and apparel

products have been transshipped through Tanzania in circumvention of textile agreements negotiated pursuant to section 204. Therefore, the public is advised that CITA intends to direct the Commissioner of Customs, effective on August 18, 1990, to deny entry for consumption and withdrawal from warehouse for consumption of some or all textile and apparel products exported from Tanzania until the United States Government has determined that textile and apparel products exported from Tanzania are not being transshipped in circumvention of textile agreements.

Importers are advised to take all necessary precautions to verify the country of origin of textile and apparel products imported into the United States.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-16773 Filed 7-17-90; 8:45 am]

BILLING CODE 3510-DR-M

### DEPARTMENT OF ENERGY

#### Agency Information Collection Extensions

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** The Department of Energy (DOE) has submitted the following five public information collection packages to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1980, Public Law No. 96-511. The packages cover management and procurement collections of information from management and operating contractors of DOE's Government-owned/contractor-operated facilities, offsite contractors, financial assistance recipients, grantees, and the public. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

**DATES AND ADDRESSES:** Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address no later than August 16, 1990.

Mr. Ron Minsk, DOE Desk Officer, Office of Management and Budget (OIRA), Room 3001, New Executive Office Building, Washington, DC 20503, (202) 395-3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned (202) 395-3084. (Also, please notify the DOE contact listed in this notice.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:**

Ronald L. Shores, Information Management Support Division (AD-241), Department of Energy, Washington, DC 20585, (301) 353-3307.

*Package Title:* Environment, Safety and Health.

*Current OMB No.:* 1910-0300.

*Type of Respondents:* DOE management and operating contractors.

*Estimated Number of Responses:* 10,785.

*Estimated Total Burden Hours:* 965,051.

*Purpose:* This information is required by the Department to assure that Environment, Safety and Health resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 78 information and/or recordkeeping requirements.

*Package Title:* Financial Assistance and Incentives.

*Current OMB No.:* 1910-0400.

*Type of Respondents:* Grantees, assistance recipients, and contractors.

*Estimated Number of Responses:* 74,398.

*Estimated Total Burden Hours:* 708,009.

*Purpose:* This information is required by the Department to assure that financial assistance and incentives resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 66 information and/or recordkeeping requirements.

*Package Title:* Financial Management.

*Current OMB No.:* 1910-0500.

*Type of Respondents:* DOE management and operating contractors, offsite contractors, grantees, and financial assistance recipients.

*Estimated Number of Responses:* 25,764.

*Estimated Total Burden Hours:* 776,281.

*Purpose:* This information is required by the Department to assure that

<sup>1</sup> The limit has not been adjusted to account for any imports exported after June 27, 1990.

financial management resources and requirements are managed effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 51 information and/or recordkeeping requirements.

*Package Title:* Nuclear Materials.

*Current OMB No.:* 1910-0900.

*Type of Respondents:* DOE management and operating contractors, offsite contractors.

*Estimated Number of Responses:* 12,302.

*Estimated Total Burden Hours:* 435,395.

*Purpose:* This information is required by the Department to assure that nuclear materials resources and requirements are managed efficiently, and to exercise management oversight of DOE contractors and grantees. The package contains 106 information and/or recordkeeping requirements.

*Package Title:* Safeguards and Security.

*Current OMB No.:* 1910-1800.

*Type of Respondents:* DOE management and operating contractors, offsite contractors.

*Estimated Number of Responses:* 168,428.

*Estimated Total Burden Hours:* 879,916.

*Purpose:* This information is required by the Department to assure that safeguards and security resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 64 information and/or recordkeeping requirements.

Jim E. Tarro,

*Director of Administration and Human Resource Management.*

[FR Doc. 90-16775 Filed 7-17-90; 8:45 am]

BILLING CODE 6450-01-M

#### Grant Award; Melvin M. Richardson

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Justification for acceptance of an unsolicited proposal.

**SUMMARY:** DOE announces that it plans to award a grant to Melvin M. Richardson to create an Idaho National Engineering Laboratory (INEL) Scholastic Tournament for a three year period. The first year grant will be \$52,830, and \$47,680 each for the second and third year, for a total of \$147,990. This grant is authorized under the Energy Reorganization Act of 1974, Public Law 93-438, section 103,

Paragraph 11. DOE has determined that the unsolicited proposal meets the selection criteria contained in 10 CFR 600.14(e). The overall objective of this grant is to support the DOE program for science and mathematics education. The specific objective will be to inform students in the State of Idaho of the importance of science and mathematics education in the United States, and of the career opportunities available in scientific and technical fields; and to encourage students to pursue post-secondary degrees, particularly in science and engineering.

The applicant has the required contacts within the Idaho educational community and the necessary experience and knowledge to carry out the program. He has 26 years of experience as director of a similar program for private industry. There is no other individual within the State of Idaho having this particular combination of proven experience and talents for the initiation of this program. There is no existing program of this kind in the State of Idaho or its contiguous States. There are no recent, current, or planned solicitations under which this unsolicited proposal would be eligible for consideration.

**PROCUREMENT REQUEST NUMBER:** 90ID13021.

**PROJECT OBJECTIVE:** Create an Idaho National Engineering Laboratory (INEL) Scholastic Tournament to be a state-wide scholastic competition available to all 127 high schools in the State of Idaho. It will be structured to emphasize science and mathematics and to encourage students to pursue post-secondary degrees in these technical areas.

**FURTHER INFORMATION CONTACT:** Ginger Sandwina, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued in Idaho Falls, Idaho on July 3, 1990.

R. Jeffery Hoyles,

*Acting Director, Contract Management Division, Idaho Operations Office.*

[FR Doc. 90-16776 Filed 7-17-90; 8:45 am]

BILLING CODE 6450-01-M

#### Office of the Secretary

**Regional Hearings To Solicit Views From Public Officials and Individuals With Expertise and Interest in the Development of a National Energy Strategy**

**AGENCY:** Office of the Secretary, Department of Energy.

**ACTION:** Notice of hearing to provide comments on energy pricing and its role in the development of a National Energy Strategy.

**SUMMARY:** This hearing will be the seventeenth hearing in a series being conducted throughout the country the Department of Energy to solicit comments from interest parties on a range of topics. Oral testimony at this hearing will be presented by invitation only. The Department is interested in obtaining specific suggestions as to options and obstacles to efficient energy pricing. Written comments regarding this hearing can be submitted by any interested party at either the hearing site or directly to the Department of Energy, Office of Policy, Planning and Analysis, PE-4, room 7H-062, 1000 Independence Avenue, SW., Washington, DC 20585. Please reference specific hearing and topic. This and other National Energy Strategy hearings are designed to solicit information, data, and analysis related to the development of national energy policy objectives, strategies for achieving them, and the role that the Federal Government should play in meeting national energy, economic and environmental needs.

**DATE LOCATION, AND TOPIC OF THE HEARING ARE AS FOLLOWS:** July 20, 1990—Washington, DC; "Energy and Pricing" (Do energy prices reflect true costs? If not, why not? What is the effect of energy pricing on energy production? What is the relationship between energy pricing and the environment? What relationship does energy pricing policy have with optimal energy efficiency?) This hearing will be held between 10 a.m. and 4 p.m. at George Washington University, Fonger Hall, Room 108, 2201 G Street, Washington DC, 20052.

**FOR FURTHER INFORMATION CONTACT:** For further information, please write or call William H. Hatch, PE-4, room 7H-062, Office of Policy, Planning and Analysis, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-4767.

Linda G. Stuntz,

*Deputy Under Secretary, Policy, Planning and Analysis.*

[FR Doc. 90-16843 Filed 7-16-90; 9:44 am]

BILLING CODE 6450-01-M

**Chicago Operations Office****Award Based on Acceptance of a Renewal Application U.S. Export Council for Renewable Energy****AGENCY:** Department of Energy.**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office through its Solar Energy Research Institute Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant renewal award to the U.S. Export Council for Renewable Energy for continued support to the Committee on Renewable Energy Commerce and Trade (CORECT). The objectives of the work to be supported by this grant are assistance to the World Bank Diesel Project in utilizing renewable energy applications throughout its network in diesel financing by the incorporation of renewable energy technologies into project plans, and issuance of quarterly reports on the projects and the actual project plans; conversion of data on the status of renewable energy industries and their markets to an electronic database; and the quarterly publication of REXPORT, an export newsletter.

**FOR FURTHER INFORMATION CONTACT:** Patricia Russo Schassburger, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231-1495.

**SUPPLEMENTARY INFORMATION:** CORECT undertakes activities in support of the US renewable energy industry's export efforts. In order to carry out these activities, CORECT needs a close liaison with the US renewable energy industry. The U.S. Export Council on Renewable Energy is the only organization that represents the export interests of the US renewable energy trade associations. Therefore, the grant renewal application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct these types of export assistance activities.

The project period for the grant renewal is a one year period, expected to begin in September 1990. DOE plans to provide funding in the amount of \$110,987 for this project period.

Issued in Chicago, Illinois on July 5, 1990.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 90-16777 Filed 7-17-90; 8:45 am]

BILLING CODE 6450-01-M

**Energy Information Administration****Agency Information Collections Under Review by the Office of Management and Budget****AGENCY:** Energy Information Administration, DOE.**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96-511, 44 U.S.C. 3501 *et. seq.*) The listing does not include a collection of information contained in a new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed by August 17, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office

of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Jay Casselberry, Office of Statistical Standards (EI-73) Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC 15
3. 1902-0037
4. Interstate Pipeline's Annual Report of Gas Supply
5. Extension
6. Annually
7. Mandatory
8. Businesses or other for profit
9. 86 respondents
10. 86 responses
11. 609 hours per response
12. 52,374 hours
13. The data collected in FERC-15, Interstate Pipeline's Annual Report of Gas Supply, will be used by the Commission in performing its regulatory functions in gas supply certificates and deficiency cases, depreciation cases, rate cases, and determining new or increased sales.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC July 13, 1990.

**Yvonne Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 90-16777 Filed 7-17-90; 8:45 am]

BILLING CODE 6450-01-M

**Federal Energy Regulatory Commission**

[Project No. 1999 Wisconsin]

**Wisconsin Public Service Corp.; Intent To File an Application for a New License**

July 11, 1990.

Take notice that Wisconsin Public Service Corporation, the existing licensee for the Wausau Hydroelectric Project No. 1999, filed a notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commissions Regulations (revised January 9, 1990). The original license for Project No. 1999 was issued effective April 1, 1975, and expires June 30, 1995.

The project is located on the Wisconsin River in Marathon County, Wisconsin. The principal works of the

Wausau Project include a 30-foot-high, 1,036-foot-long concrete and masonry dam with an overflow spillway; a reservoir of 304 acres at elevation 1,186.87 feet USGS; a powerhouse integral with the dam and with an installed capacity of 5,400 kw; a transmission line connection and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make certain information available to the public. This information is now available from the licensee at 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307-9002, Attn: Mr. Thomas P. Meinz, telephone (414) 433-1293.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16691 Filed 7-17-90; 8:45 am]

BILLING CODE 6717-01-M

## Office of Energy Research

### Fusion Policy Advisory Committee and Technical Panel on Magnetic Fusion; Joint Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following joint meeting:

**Name:** Fusion Policy Advisory Committee and Technical Panel on Magnetic Fusion.

**Date & Time:** July 26, 1990—8:30 a.m.—5 p.m.; July 27, 1990—8 a.m.—5 p.m.

**Place:** Department of Energy, 1000 Independence Avenue, SW., room 6E-069, Washington, DC 20585, (202) 586-5444.

**Contact:** William Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5767.

**Purpose of the Committees:** The purpose of the Fusion Policy Advisory Committee is to review the conduct of the Department of Energy's magnetic and inertial confinement fusion programs and to recommend to the Department a policy for the development of fusion energy for civilian applications. The purpose of the Technical Panel on Magnetic Fusion is to perform a review of the conduct of the national magnetic fusion energy program as mandated by the Magnetic

Fusion Engineering Act of 1980 (Pub. L. 96-386). The Committee and the Panel memberships are identical and both charters cover the magnetic fusion research programs of the Department of Energy.

#### Tentative Agenda:

July 26, 1990

8:20 a.m. Administrative Items.

8:45 a.m. Discussion of Topics for Final Report.

12 noon Lunch.

1 p.m. Discussion of Topics for Final Report.

4:50 p.m. Public Comment (10 minute rule).

5 p.m. Adjourn.

July 27, 1990

8 a.m. Administrative Items.

8:15 Discussion of Topics for Final Report.

12 noon Lunch.

1 p.m. Discussion of Topics for Final Report.

4:50 p.m. Public Comment (10 minute rule).

5 p.m. Adjourn.

**Public Participation:** The joint meeting is open to the public. Written statements may be filed with the Committee either before or after the joint meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the joint meeting and reasonable provisions will be made to include the presentation on the agenda.

**Transcripts:** The transcript of the joint meeting will be available for public review and copying at the Freedom of Information Public Reading room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on: July 13, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-16780 Filed 7-17-90; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

[FE Docket Nos. 90-36-NG and 90-37-NG]

### North Canadian Marketing Corp.; Application for Blanket Authorization to Import and Export Natural Gas From and to Canada

**AGENCY:** Office of Fossil Energy; Department of Energy.

**ACTION:** Notice of application for blanket authorization to import and export natural gas from and to Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 2, 1990, as supplemented on June 6, 1990, of separate applications filed by North Canadian Marketing Corporation (NCM), requesting blanket authority to import from Canada up to 200,000 Mcf of natural gas per day, for an aggregate of 146 Bcf, and to export to Canada up to 75,000 Mcf of domestic natural gas per day, for an aggregate of 40 Bcf, over a two-year period beginning on the date that the first import or export delivery occurs. The transfer of import authority from NCM's affiliate, North Canadian Resources, Inc. (NRC) to NCM, which was a part of NCM's blanket request to import gas from Canada in Docket 90-36-NG, was ordered by FE effective May 31, 1990. NCR was authorized by DOE/ERA Opinion and Order No. 234 (Order 234) to import up to 146 Bcf of natural gas from Canada over a two-year period that will expire October 27, 1990.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., August 17, 1990.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.  
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

#### SUPPLEMENTARY INFORMATION:

NCM, a California corporation, is the wholly-owned subsidiary of North Canadian Oils Limited, an Alberta corporation with its principal place of business in Calgary, Alberta. NCM is a marketer of natural gas in the United

States. NCM, for its own account or on behalf of others, requests authority to both import Canadian natural gas and to export domestic supplies of natural gas to Canadian customers on a short-term or spot basis under contracts of two years or less. NCM states the short-term sales would be negotiated individually in response to prevailing market conditions in the U.S. and Canada. NCM intends to use existing facilities for the transportation of the gas. NCM also would file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual import/export transactions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, 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 arrangement. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested import and export authority. The applicant asserts that the requested import authority will provide gas on competitive terms, and the proposed export will provide additional markets for U.S. natural gas supplies that are not needed to meet current U.S. demand. Parties opposing the arrangement bear the burden of overcoming these assertions. In the event these applications are approved, FE, consistent with past practice and in order to provide the applicant maximum flexibility, may designate aggregate rather than daily volumes.

#### 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 effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

#### 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 at the above address.

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 trail-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, a 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.

Copies of NCM's applications are 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 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 12, 1990.

Clifford P. Tomaszewski,  
Acting Deputy Assistant Secretary for Fuels  
Programs, Office of Fossil Energy.

[FR Doc. 90-16778 Filed 7-17-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[PP 9G3742/T598; FRL 3770-7]

### Amitraz; Establishment of Temporary Tolerances

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Nor-Am Chemical Co.

**DATES:** These temporary tolerances expire June 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2386

**SUPPLEMENTARY INFORMATION:** Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, has requested in pesticide petition (PP) 9G3742 the establishment of temporary tolerances for the combined residues of the insecticide/miticide amitraz N'-(2,4-dimethylphenyl)-N-[[[(2,4-dimethylphenyl)imino] methyl]-N-methylmethanimidamide and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the raw agricultural commodities cottonseed at 1.0 part per million (ppm), in eggs and the meat and fat of poultry, horses, goats, and sheep at 0.01 ppm, and in the meat by-products of poultry, horses, goats, and sheep at 0.05 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 45639-EUP-39, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 1, 1991. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (48 FR 24950).

Authority: 21 U.S.C. 346a(f).

Dated: June 25, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-16331 Filed 7-17-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180831; FRL 3770-3]

### Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 15 States as listed below. Four crisis exemptions were initiated by various States. Also granted was one quarantine exemption from the United States Department of Agriculture/APHIS. These exemptions were issued in April, except for one issued in March. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied an exemption request from the Hawaii, Tennessee, and Washington Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific, crisis, and quarantine exemption for its effective date.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of avermectin B<sub>1</sub> on pears to control spider mites; April 18, 1990, to September 15, 1990. (Libby Pemberton)
2. California Department of Food and Agriculture for the use of triadimefon on tomatoes to control powdery mildew; April 12, 1990, to March 31, 1991. (Susan Stanton)
3. California Department of Food and Agriculture for the use of fosetyl-aluminum (Aliette) on avocado trees to control phytophthora root rot; April 16, 1990, to April 15, 1991. (Susan Stanton)
4. Colorado Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphids; April 10, 1990, to December 31, 1990. (Robert Forrest)
5. Colorado Department of Agriculture for the use of cypermethrin on dry bulb onions to control thrips; April 18, 1990, to September 15, 1990. (Robert Forrest)

6. Florida Department of Agriculture and Consumer Services for the use of chlorothalonil on mangoes to control anthracnose; April 13, 1990, to August 31, 1990. Florida had initiated a crisis exemption for this use. (Susan Stanton)

7. Idaho Department of Agriculture for the use of avermectin B<sub>1</sub> on pears to control spider mites; April 18, 1990, to September 1, 1990. (Libby Pemberton)

8. Idaho Department of Agriculture for the use of cypermethrin on onions to control thrips; April 27, 1990, to September 15, 1990. (Robert Forrest)

9. Louisiana Department of Agriculture and Forestry for the use of clomazone on sweet potatoes to control annual broadleaf weeds and grasses; April 25, 1990, to July 15, 1990. (Susan Stanton)

10. Minnesota Department of Agriculture for the use of tridiphane on sweet corn to control wild proso millet; April 13, 1990, to August 31, 1990. (Robert Forrest)

11. Mississippi Department of Agriculture and Commerce for the use of clomazone on sweet potatoes to control annual broadleaf weeds and grasses; April 25, 1990, to July 15, 1990. (Susan Stanton)

12. Montana Department of Agriculture for the use of clopyralid on mint to control various weeds; April 2, 1990, to October 15, 1990. (Susan Stanton)

13. New Mexico Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; April 11, 1990, to July 15, 1990. (Robert Forrest)

14. Oklahoma Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphids; April 13, 1990, to June 30, 1990. (Robert Forrest)

15. Oregon Department of Agriculture for the use of avermectin B<sub>1</sub> on pears to control spider mites; April 18, 1990, to September 1, 1990. (Libby Pemberton)

16. Oregon Department of Agriculture for the use of cypermethrin on onions to control thrips; April 27, 1990, to August 15, 1990. (Robert Forrest)

17. South Dakota Department of Agriculture for the use of tiller herbicide on hard red spring wheat to control foxtail and millet; April 11, 1990, to July 15, 1990. (Susan Stanton)

18. Texas Department of Agriculture for the use of cypermethrin on onions to control thrips; April 27, 1990, to September 15, 1990. Texas had initiated a crisis exemption for this use. (Robert Forrest)

19. Washington Department of Agriculture for the use of avermectin B<sub>1</sub> on pears to control pear psylla; April 18,

1990, to September 1, 1990. (Libby Pemberton)

20. Washington Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphids; April 5, 1990, to December 31, 1990. (Robert Forrest)

21. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of cypermethrin on onions to control thrips; April 27, 1990, to August 30, 1990. (Robert Forrest)  
Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on April 18, 1990, for the use of esfenvalerate on small grains to control cutworms. The need for this program is expected to last until December 31, 1990. (Libby Pemberton)

2. Maryland Department of Agriculture on April 6, 1990, for the use of acephate to kill the feral honey bees to control Varroa mites. This program has ended. (Libby Pemberton)

3. Montana Department of Agriculture on April 4, 1990, for the use of esfenvalerate on small grains to control cutworms. The need for this program is expected to last until November 1, 1990. (Libby Pemberton)

4. South Dakota Department of Agriculture on March 27, 1990, for the use of esfenvalerate on wheat to control cutworms. The need for this program is expected to last until December 15, 1990. (Libby Pemberton)

EPA has denied specific exemption requests from the:

1. Hawaii Department of Agriculture for the use of fosetyl-aluminum (Aliette) on macadamia nuts to control phytophthora blight. (Susan Stanton)

2. Tennessee Department of Agriculture for the use of Accent or Beacon on field corn to control Johnsongrass. A notice published in the Federal Register on February 8, 1990 (55 FR 4479); no comments were received. The Agency has denied the request for the use of Accent or Beacon because the data that were submitted did not indicate that a nonroutine situation exists in accordance with the section 18 regulations. Accent is also being denied because chronic data are still under review by the Agency. (Robert Forrest)

3. Washington Department of Agriculture for the use of clopyralid on asparagus to control thistle. (Susan Stanton)

EPA has granted a quarantine exemption to the United States Department of Agriculture/APHIS for the use of dichlorvos in dry type fruit fly traps to monitor Mediterranean fruit flies; April 9, 1990, to April 8, 1993. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: June 28, 1990.

Douglas D. Camp, Jr.

Director, Office of Pesticide Programs.

[FR Doc. 90-16330 Filed 7-17-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100079; FRL-3771-7]

**American Scientific International Inc; Transfer of Data**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). American Scientific International Inc. (ASCI) will perform work specified under EPA contract number 68-02-4475. This work will be done for the EPA Office of Pesticide Programs, Environmental Fate and Effects Division and will require access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed as confidential business information (CBI) by submitters. This information will be transferred to ASCI as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This transfer will enable ASCI to fulfill the terms of the contract, and this notice serves to notify affected persons.

**DATES:** ASCI will be given access to this information no sooner than July 25, 1990.

**FOR FURTHER INFORMATION CONTACT:** By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-02-4475, the contractor will provide technical assistance in analysis of the available data to determine the impact of atrazine (and other pesticides as needed) on ground water. Geographic and statistical analysis will be conducted to identify and predict areas of high ground water contamination potential for atrazine. The contractor will also provide assistance with the reformatting and updating of the Pesticides in Ground Water Data Base to include extensive new data. The contractor will work on-

site. This contract involves no subcontractors.

The Office of Pesticide Programs has determined that access by ASCI to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 406 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2308(i)(2), ASCI shall not use the information for any purpose other than the purposes specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. No information will be provided to ASCI until the above requirements have been fully satisfied. ASCI will provide the above services within EPA facilities and will handle documents in accordance with the FIFRA Information Security Manual. Records of information provided to ASCI will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to ASCI by EPA for use in connection with the contract will be returned to EPA when ASCI has completed its work.

Dated: July 9, 1990.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 90-16738 Filed 7-17-90; 8:45 a.m.]

BILLING CODE 6560-50-F

[OPP-100080; FRL-3772-4]

**ICF Inc.; Transfer of Data**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). ICF Inc. has been awarded a contract to perform work for EPA's Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed

to be confidential business information (CBI) by submitters. This information will be made available to ICF Inc. in accordance with requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable ICF Inc. to fulfill the obligations of the contract and serves to notify affected persons.

**DATES:** ICF Inc. will be given access to this information no sooner than July 25, 1990.

**FOR FURTHER INFORMATION CONTACT:** By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-C8-0003, Delivery Order No. 270, ICF Inc. will assist with examining the economics of seed production, treatment, storage, and disposal to ascertain the determinants of seed industry treatment and storage behavior. Based on these analyses, incentive-based methods for encouraging reduced volumes of obsolete seeds will be developed.

The Office of Pesticide Programs has determined that access by ICF Inc. to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contract with ICF Inc. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and handle it in accordance with the FIFRA Information Security Manual. In addition, ICF Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for

this contract in the EPA Office of Pesticide Programs. All information supplied to ICF Inc. by EPA for use in connection with this contract will be returned to EPA when ICF Inc. has completed their work.

Dated: July 9, 1990.  
Susan H. Wayland,  
*Acting Director, Office of Pesticide Programs.*  
[FR Doc. 90-16739 Filed 7-17-90; 8:45 a.m.]  
BILLING CODE 6560-50-F

[OPP-100081; FRL-3772-5]

**Oak Ridge National Laboratory and Martin Marietta Inc.; Transfer of Data**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Food, Drug, and Cosmetic Act (FFDCA). The Oak Ridge National Laboratory (ORNL) and Martin Marietta Inc., under an Interagency Agreement (IAG) will perform work for the EPA Office of Health and Environmental Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ORNL and the Martin Marietta Inc. consistent with the requirements of 40 CFR 2.209(c) and 2.308(i)(2), respectively. This transfer will enable ORNL and Martin Marietta Inc. to fulfill the obligations of an IAG and this notice serves to notify affected persons.

**DATES:** ORNL and Martin Marietta Inc. will be given access to this information no sooner than July 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)557-4460.

**SUPPLEMENTARY INFORMATION:** ORNL under IAG No. DW89932701-01-3, will assist in the assessment of the potential and degree of hazard posed by toxic chemicals to human health and ecological integrity. ORNL will provide

technical assistance to OHEA for the collection, summarization and critical evaluation of the toxic effects for environmental pollutants. Also ORNL will assist with the development of methodologies for health risk assessment for the development of regulatory action of environmental pollutants.

The Office of Health and Environmental Assessment and the Office of Pesticide Programs have jointly determined that IAG No. DW89932701-01-3, involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.209(c) and 2.308(i)(2), the IAG with ORNL and Martin Marietta Inc. prohibits use of the information for any purpose other than the purposes specified in the IAG; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ORNL and Martin Marietta Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided until the above requirements have been fully satisfied. Records of information provided under the IAG will be maintained by the Project Officer for each task in the EPA Office of Health and Environmental Assessment.

All information supplied to ORNL and Martin Marietta Inc. by EPA for use in connection with the IAG will be returned to EPA when ORNL and Martin Marietta Inc. have completed their work.

Dated: July 9, 1990.  
Susan H. Wayland,  
*Acting Director, Office of Pesticide Programs.*  
[FR Doc. 90-16740 Filed 7-17-90; 8:45 a.m.]  
BILLING CODE 6560-50-F

[FAP-537; FRL-3770-9]

**BASF Corp.; Notice of Filing of Pesticide Tolerance Petition****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces the filing of food/feed additive petition (FAP) 7H5544 by the BASF Corp. to establish tolerances for residues of the plant growth regulator N,N-dimethylpiperdinium chloride in or on the food commodity raisins at 6.0 parts per million (ppm) and in or on the feed commodities raisin waste at 26.0 ppm and grape pomace (wet and dry) at 3.0 ppm.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

**SUPPLEMENTARY INFORMATION:** This notice announces that EPA has received food/feed additive petition (FAP) 7H5544 from the BASF Corp., Agricultural Chemicals Group, P.O. Box 13528, Research Triangle Park, NC 27709, proposing to establish tolerances for the plant growth regulator N,N-dimethylpiperdinium chloride in 40 CFR 185.2275 for the food commodity raisins at 6.0 ppm and in 40 CFR 186.2275 for the

feed commodities raisin waste at 26.0 ppm and grape pomace (wet and dry) at 3.0 ppm. These tolerances were previously established as temporary tolerances in 21 CFR 193.48 and 561.197, respectively (redesignated as 40 CFR 185.2275 and 186.2275, respectively, in the Federal Register of June 29, 1988 (53 FR 24668)) that expired on June 30, 1989.

**Authority:** 7 U.S.C. 136a.

**Dated:** July 11, 1990.

**Anne E. Lindsay,**  
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-16741 Filed 7-17-90; 8:45 am]

**BILLING CODE 6560-50-F**

[PF-538; FRL-3773-6]

**Pesticide Tolerance Petitions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces initial filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. In person, contact the PM named in each

petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
Susan Lewis (PM 21).	Rm. 227, CM #2, 703-557-1900.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 207, CM #2, 703-557-1800.	Do.

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

**Initial Filings**

1. *PP OF3860.* ICI Americas, Inc., Concord Pike and New Murphy Rd., Wilmington, DE 19879, proposes to amend 40 CFR 180.364 by establishing a regulation to permit combined residues of N-phosphonomethyl glycine (carboxylamino-methyl phosphonate) and its metabolite, AMPA, resulting from application of the trimethylsulfonium salt in or on soybean hay at 3.0 ppm, soybean seed at 2.0 ppm, and soybean forage at 1.0 ppm. Analytical method used is gas liquid chromatography. (PM 25)

2. *PP OF3861.* American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposes to amend 40 CFR 180.447 by establishing a regulation to permit combined residues of imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid) and its ammonium salt in or on peanut nuts and hulls at 0.1 ppm. Analytical method used is thin layer chromatography. (PM 25)

3. *PP OF3864.* Rhone Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by establishing a regulation to permit residues of aluminum tris (O-ethyl phosphonate) in or on dry bulb onions at 0.50 ppm. (PM 21)

4. *PP OF3865.* Monsanto Co., 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 180.364 by establishing a regulation to permit combined residues of the herbicide glyphosate (N-(phosphonomethyl) glycine) and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt in or on wheat straw at 85 ppm and wheat grain at 4 ppm. Analytical method

used is high-performance liquid chromatography. (PM 25)

5. *PP OF3866*. Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 100.410 by lowering the tolerance for residues of the fungicide 1-(4-chlorophenyl)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing the chlorophenoxy and triazole moieties (expressed as the fungicide) in or on wheat grain from 1.0 ppm to 0.50 ppm. (PM 25)

6. *PP OF3868*. SKW Trotsberg, Siermer Associates, Inc., 4672 W. Jennifer, Fresno, CA 93722, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of hydrogen cyanamide on grapes. Analytical method used is high-performance liquid chromatography. (PM 23)

7. *PP OF3869*. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR 180.434 by establishing a regulation to permit combined residues of the fungicide 1-[(2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl)]-methyl-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on celery at 5.0 ppm. Analytical method used is capillary gas chromatography. (PM 21)

8. *PP OF3870*. American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposes to amend 40 CFR 180.447 by establishing a regulation to permit combined residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazole-2-yl]-5-ethyl-3-pyridinecarboxylic acid) as its ammonium salt in or on field corn forage, silage, grain, and fodder at 0.1 ppm. Analytical method used is gas chromatography. (PM 25)

9. *PP OF3871*. Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807-5948, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of gibberelic acid and indolebutyric acid used as plant growth regulators in or on apples, alfalfa, barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, cherries, corn (field, sweet, popcorn), cotton, cucumber, eggplant, garlic, grapefruit, grapes, grasses, lemons, lettuce, melons, mustard greens, oats, okra, onions, oranges, peaches, peanuts, pears, peas, pecans, peppers, potatoes, potatoes (sweet), radishes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat. Proposed analytical method for determining

residues is high-performance liquid chromatography, spectrofluorimetry radio-immunoassay. (PM 25)

10. *FAP OH5598*. Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 185.800 by lowering the food additive regulation for combined residues of the fungicide 1-(4-chlorophenyl)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing the chlorophenyl and triazole moieties (expressed as the fungicide in or on wheat milled fraction (except flour) from 4.0 ppm to 2.0 ppm. (PM 25)

Authority: 7 U.S.C. 136a.

Dated: July 11, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-16742 Filed 7-17-90; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-873-DR]

### Amendment to Notice of a Major Disaster Declaration; Nebraska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska (FEMA-873-DR), dated July 4, 1990, and related determinations.

**DATES:** July 9, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Nebraska, dated July 4, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 1990:

Cuming County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16747 Filed 7-17-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-873-DR]

### Amendment to Notice of a Major Disaster Declaration; Nebraska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska (FEMA-873-DR), dated July 4, 1990, and related determinations.

**DATED:** July 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** Notice is hereby given that the incident period for this disaster is closed effective July 7, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16748 Filed 7-17-90; 8:45 am]

BILLING CODE 6718-07-M

### Board of Visitors for the National Fire Academy; Open Meeting—Correction

Announcement was previously made of this meeting in the *Federal Register* on June 23, 1990, Vol. 55 FR 125 at page 26504. This corrected announcement is to notify the public of a change in the location of the meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: August 8-9, 1990.

Place: Sheraton St. Louis Hotel, Grant Room, 910 North 7th Street, St. Louis, Missouri.

Time: August 8—1:30 p.m.—5 p.m. (Quarterly Meeting), August 9—8:30 a.m.—12 p.m. (Quarterly Meeting), 2 p.m. to completion (Field Survey Meeting).

Proposed Agenda: Old business, new business, field survey meeting.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1123) on or before July 23, 1990.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: July 5, 1990.  
 Laura A. Buchbinder,  
 Acting Director, Office of Training.  
 [FR Doc. 90-16749 Filed 7-17-90; 8:45 am]  
 BILLING CODE 6718-01-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.: 203-011290.  
 Title: Vessel Operators Hazardous Materials Association (VOHMA) Agreement.

- Parties:  
 Kawasaki Kisen Kaisha, Ltd.  
 A.P. Moller-Maersk Line.  
 Nippon Yusen Kaisha Ltd.  
 P&O Containers, Ltd.  
 Sea-Land Service, Inc.  
 Wilhelmsen Lines A/S.  
 Zim Israel Navigation Co., Ltd.  
 America-Africa-Europe Line.  
 Atlantic Container Line BV.  
 Evergreen Marine Corporation (Taiwan) Ltd.  
 Hapag-Lloyd AG.  
 Farrell Lines, Inc.  
 Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed Agreement would promote safe and uniform carrier practices regarding the handling and carriage of hazardous materials in U.S. foreign commerce. It would also authorize the parties to discuss and agree upon all matters relating to the handling and transportation of hazardous cargoes, including advocating common positions before governmental and other bodies, and discussions and agreements pertaining to all-water and intermodal transportation of hazardous cargo in the U.S. trades. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 12, 1990.

Joseph C. Polking,  
 Secretary.  
 [FR Doc. 90-16723 Filed 7-17-90; 8:45 am]  
 BILLING CODE 6730-01-M

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

**TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062590 AND 070690**

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Charles Clifton Robinson, Estate of Charles A. Sammons, c/o Robert W. Korba, Reserve Life Insurance Company	90-1563	06/25/90
S.A. Louis Dreyfus et Cie, Richard D. Bogert, Bogert Oil Company	90-1585	06/25/90
NUI Corporation, Pennsylvania Enterprises, Inc., Pennsylvania Enterprises, Inc.	90-1678	06/25/90
British Gas plc, GWU Capital Corp., The Consumers Gas Company Ltd.	90-1727	06/25/90
IJ Holdings Corp., The Philip Co. Trust, Wood Manufacturing Company, Inc.	90-1588	06/26/90
Northeast Utilities, HEC Energy Corporation, HEC Energy Corporation	90-1626	06/26/90
Simon Trust Partnership No. 3, Simon Trust Partnership No. 3, Lynnhaven Mall Associates	90-1645	06/26/90
Abraham D. Gosman, Avon Products, Inc., The Mediplex Group, Inc. and Mediplex Construction Co.	90-1665	06/26/90
Telecommunications, Inc., MCI Communications Corporation, MCI Telecommunications Corporation	90-1682	06/26/90
General Electric Company, Empire Federal Savings Bank of America, Empire Federal Savings Bank of America, et al.	90-1706	06/26/90
Reckitt & Colman plc, American Home Products Corporation, Boyle-Midway Household Products, Inc., Boyle-Midway	90-1184	06/27/90
Boston Ventures Limited Partnership III, The News Corporation Limited, News America Publishing Incorporated	90-1258	06/27/90
Adolph Coors, Jr. Trust, c/o Adolph Coors Company, The Stroh Companies, Inc., The Stroh Companies, Inc.	90-1642	06/27/90
Mr. Stephan Schmidheiny, Dr. Claude Barbey, Finance & Trading Holding S.A.	90-1666	06/27/90
Lyonnaises des Eaux, AMREP Corporation, Albuquerque Utilities Corporation	90-1565	06/28/90
Holding Company, Inc., The Austin Company, Employee Stock Ownership Plan, The Austin Company, Incorporated	90-1567	06/28/90
Jeffrey A. Marcus, Donald G. Jones, Star Cablevision Group, Star Mid American Limited	90-1623	06/28/90
Southdown, Inc., Browning-Ferris Industries, Inc., CECOS International, Inc., CECOS Treatment Corp., et al.	90-1649	06/28/90
The Dai-ichi Mutual Life Insurance Company, Lincoln National Corporation, Lincoln National Corporation	90-1683	06/28/90
Welsh, Carson, Anderson & Stowe V, L.P., Bernard D. Landau, HHL Financial Services, Inc.	90-1362	06/29/90
Welsh, Carson, Anderson & Stowe V, L.P., c/o Zaleski, Sherwood & Co., Inc., HHL Financial Services Inc.	90-1441	06/29/90
DEKALB Energy Company, Trust U/W of Carl E. Patchin deceased, dtd May 16, 1985, Royal Producing Corp.	90-1561	06/29/90
General Electric Company, Vereniging Aegon Netherlands Membership Association Lease America Corporation	90-1638	06/29/90
Angeles Corporation, Donald L. Folkenberg, Certain assets of DLF & Medical Investors Group, Ltd.	90-1680	06/29/90
Wasserstein Perella Partners, L.P., Schering-Plough Corporation, Maybelline cosmetics business of Schering-Plough Corp.	90-1686	06/29/90
Wasserstein Perella Partners, L.P., Maybelline Holdings, Inc., Maybelline Holdings, Inc.	90-1687	06/29/90

## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062590 AND 070690—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Hillsdown Holdings plc, Canada Packers, Inc., Canada Packers Inc.	90-1691	06/29/90
Hillsdown Holdings, plc, Canada Packers Inc., Canada Packers Inc.	90-1692	06/29/90
Canada Packers Inc., Hillsdown Holdings plc, Maple Leaf Mills Limited	90-1693	06/29/90
American International Group, Inc., APL Corporation, Fischbach Corporation	90-1712	06/29/90
Carena Holdings Inc., American General Corporation, Vintage Faire Associates	90-1725	06/29/90
State Farm Mutual Automobile Insurance Company, Pogo Producing Company, Pogo Producing Company	90-1731	06/29/90
Merrill Lynch & Co., Inc., Grand Metropolitan Public Limited Company, TSO Holdings, Inc.	90-1733	06/29/90
Fukusaburo Maeda, Ski Venture, Inc., Ski Venture, Inc. (Snowshoe Ski Resort)	90-1734	06/29/90
Kamilche Company, Air Products and Chemicals, Inc., Air Products Manufacturing Corporation, and Air	90-1618	07/01/90
Oppenheimer & Co., L.P., Argo-Tech Corporation, Argo-Tech Corporation	90-1621	07/01/90
Hawker Siddeley Group Limited PLC, FKI PLC, Stone America Corporation	90-1630	07/02/90
Energy Assets IV, Ltd., Nuevo Energy Company, Nuevo Energy Company	90-1646	07/02/90
Hutton/Energy Assets 3rd Energy Partnership A, Ltd., Nuevo Energy Company, Nuevo Energy Company	90-1647	07/02/90
Hutton/Energy Assets 2nd Oil and Gas Completion, Nuevo Energy Company, Nuevo Energy Company	90-1651	07/02/90
Gordon S. Lang, c/o CCL Industries, Inc., Peter W. Paisley, The Korex Company	90-1695	07/02/90
Affiliated Publications, Inc., Kenneth L. Fadner, A/S/M Communications, Inc.	90-1707	07/02/90
Steeley PLC, Sullivan Holdings, Inc., Sullivan Graphics Inc.	90-1729	07/02/90
Mrs. Noor Sultan Hashwani, The Prudential Insurance Company of America, Block 268 Venture	90-1743	07/02/90
Mrs. Noor Sultan Hashwani, Tenneco Inc., Block 268 Venture	90-1745	07/02/90
Sextant Investments Limited, Massachusetts Mutual Life Insurance Company, The Buffalo Bayou Joint Venture (Park Hotel)	90-1748	07/02/90
Sextant Investments Limited, Wells Fargo & Company, The Buffalo Bayou Joint Venture	90-1749	07/02/90
Eli Jacobs, Richard Komen, Restaurants Unlimited, Inc.	90-1658	07/03/90
The Rank Organisation, Pic, Mecca Leisure Group PLC, Mecca Leisure Group PLC	90-1660	07/03/90
Namco Limited, Atari Games Corporation, Atari Operations, Inc.	90-1717	07/03/90
Richard F. Kelley, Yoshiro Kitami, LEO, Corp.	90-1726	07/03/90
Willis Faber p.l.c., Corroon & Black Corporation, Corroon & Black Corporation	90-1741	07/03/90
Transamerica Corporation, First Interstate Bancorp, First Interstate Financial Services Inc.	90-1668	07/05/90
American Exploration Company, Hershey Oil Corporation, Hershey Oil Corporation	90-1697	07/05/90
David S. Lee, Compagnie Generale d'Electricite, Cortelco Telecommunication Corp.	90-1740	07/05/90
First USA Holdings, Inc., United Austin Holdings, Inc., Horizon Savings Association	90-1750	07/05/90
Koninklijke Wessanen N.V., Penn Dairies, Inc., Penn Dairies, Inc.	90-1530	07/06/90
InterMedia Partners, U.S. Cable Partners, L.P., U.S. Cable Television Group, L.P.	90-1701	07/06/90

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Renee A. Horton,  
Contact Representatives, Federal Trade  
Commission, Premerger Notification  
Office, Bureau of Competition, room 303,  
Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-16736 Filed 7-17-90; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers For Disease Control

[Announcement No. 049]

#### National Institute for Occupational Safety and Health; Cooperative Agreement Program for Sentinel Event Notification System for Occupational Risks (Sensor) and Prevention of Occupational Exposure to HIV

##### Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds for cooperative agreements to State health departments which currently have a surveillance system for

occupational injuries and/or illnesses.

Competitive applications are invited from such States for: (1) Expanding surveillance of the number and kinds of emergency first-responders such as firemen, police and correctional officers, and emergency technicians (EMTs), and others; (2) providing intervention programs in first responder and related workplaces; (3) developing targeted surveillance systems in counting and characterizing occupationally related exposures to Human Immunodeficiency Virus (HIV); and (4) developing workplace intervention programs.

##### Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended.

##### Eligible Applicants

Eligible applicants are the official State public health agencies which already have in place an occupationally sensitive surveillance system capable of accessing information relating to these types of exposures. Agencies should demonstrate their ability to build or enhance networks of medical providers who can effectively use surveillance and intervention information.

##### Availability of Funds

Approximately \$175,000 is available in Fiscal Year 1990 to fund approximately 5-10 awards. It is expected that the average award will be approximately \$25,000, ranging from approximately \$17,500 to \$35,000. Funding estimates may vary and are subject to change. The awards will be made on or before September 30, 1990, for a 12-month budget period within a project period of one year.

##### Purpose

The objectives of this program are to: (1) Assist State health departments currently involved in aggressive and innovative development of active occupational health surveillance systems to expand and refine surveillance of occupational exposures to HIV by emergency first-responders and related workers; (2) enhance the capability of those State health departments to quickly identify instances of occupational exposure among these workers to that the nature and frequency of these exposures can be immediately known; (3) provide the opportunity for State health departments to evaluate the effectiveness of various methods and combinations of internal resources for identifying and intervening in the prevention of occupational exposures to HIV in emergency first-

responders and related workers; (4) provide a collaborative focus for occupational health activities already in existence in the State; (5) contribute to a better understanding of occupational exposures to HIV/Hepatitis B Virus (HBV) in emergency first-responders and related professionals; and (6) reduce the occurrence of such exposures in the workplace.

#### Program Requirements

The activities for this program require substantial CDC/NIOSH/awardee collaboration and involvement. The nature and extent of the activities are described as follows:

##### A. Recipient Activities

Develop, implement, and maintain a State-wide surveillance and intervention systems for expedient reporting of significant exposures to blood for emergency first-responders and related workers so that it is linked to intervention efforts, and to include:

1. Establishment of a formal working relationship with the State agency(ies) responsible for licensing first-responders and other health professionals to assure that all exposures are reported.
2. Maintain records of the number, type, and frequency of exposures by occupation.
3. Where available already, without creating a new requirement, maintain records of sero status of workers by occupation.
4. Prepare and distribute in medical and public health communities summaries of the characteristics of reported exposures and resulting action.
5. Collaborate with other State agencies, academic institutions, NIOSH Occupational Safety and Health Educational Resource Centers, and occupational health groups to provide technical consultation and training in the surveillance and prevention of occupational blood exposures among such workers. In addition, all activities should support existing State-wide surveillance and intervention activities.

##### B. CDC/NIOSH Activities

1. Provide technical assistance in all phases of development, implementation, and maintenance of reporting, consultation, training, and intervention activities.
2. Provide guidance on occupational exposures based upon current state-of-the-art work practices and personal protective equipment recommendations.
3. Provide epidemiologic assistance and collaboration in the summary, analysis, and distribution of information on reported cases and resulting actions.

4. Coordinate, among the States, the identification of the most effective methods and techniques for case reporting and intervention and prevention activities.

Any projects that involve the collection of information from 10 or more respondents will be reviewed by OMB under the Paperwork Reduction Act.

#### Evaluation Criteria

The review will be based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

##### A. Technical Approach

1. The applicant's understanding of the objectives of the proposed reporting the intervention activity. (10 Points)
2. The applicant's ability to identify and enter into working relationships with appropriate first-responder licensing and regulating agencies in the same State. (15 Points)
3. The plans and capability to maintain individual case reports confidentially as medical information, and sensitivity to the need for careful management of each reported case, especially with regard to employment status. (10 Points)
4. The plans to provide consultation and training in the prevention of occupational exposures identified. (10 Points)
5. The application must include a strong evaluation component for the reporting and intervention activities. (10 Points)
6. The extent to which the proposed schedule clearly defines the time frame and the feasibility for accomplishing each of the activities to be carried out in the project, and the extent to which a clearly defined method for evaluating the accomplishment of the project is proposed. (15 Points)

##### B. Background, Experience, and Capability

1. Experience of the proposed staff in conducting demonstration projects and other types of research and, in particular, the qualifications of the proposed project coordinator. (5 Points)
2. Experience in conducting, directly or through collaborative association, prevention programs in the workplace to address prevention techniques in first-responder and other workplaces. (10 Points)

##### C. State Commitment

1. Existence of prior and current occupational health activities especially as they relate to surveillance and

prevention of occupational illness and injury. (5 Points)

2. Ability and willingness to incorporate surveillance for occupational disorders as an integral part of State public health programs for identification, investigation, control and prevention of disease, including the possibility of providing additional State/local funds and/or staff time. (5 Points)

3. The proportion of the project coordinator's time that the State is willing to make available to the program. (5 Points)

#### Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Number is 13.262.

#### Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Mr. Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control, Mailstop E14, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before August 15, 1990.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

#### Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from: Ms. Lisa G. Tamaroff, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E14, 255 East Paces Ferry Road NE., Room 300, Atlanta,

Georgia 30305, or by calling (404) 842-6630 (FTS: 236-6630).

Announcement No. 049, "Sentinel Event Notification System for Occupational Risks (SENSOR) and Prevention of Occupational Exposure to HIV," must be referenced in all requests for information pertaining to this project.

Technical assistance may be obtained from Centers for Disease Control, Attn: Mr. Phil Strine, HIV Activity, National Institute for Occupational Safety and Health, Centers for Disease Control, Mailstop F40, 1600 Clifton Road, NE., Atlanta, Georgia 30333, or by calling (404) 639-0983 (FTS: 236-0983).

Dated: July 12, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 90-16768 Filed 7-17-90; 8:45 am]

BILLING CODE 4160-19-M

**Food and Drug Administration**

**Advisory Committees; Renewals**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory committees by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 (5 U.S.C. App. 2)).

**DATES:** Authority for these committees will expire on the date indicated below unless the Secretary formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Blood Products.....	May 13, 1992.
Pulmonary-Allergy Drugs.....	May 30, 1992.
Drug Abuse.....	May 31, 1992.
Science Advisory Board to the National Center for Toxicological Research.	June 2, 1992.
Peripheral and Central Nervous System Drugs.	June 4, 1992.
Psychopharmacologic Drugs.....	June 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: July 11, 1990.  
 Ronald G. Chesemore,  
 Associate Commissioner for Regulatory Affairs.  
 [FR Doc. 90-16725 Filed 7-17-90; 8:45 am]  
 BILLING CODE 4160-01-M

**Public Health Service**

**Statement of Organization, Functions and Delegations of Authority**

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 55 FR 12286-89, April 2, 1990), is amended to reflect a modification in the functional statement for the National Vaccine Program Office. The modification changes the title of the head of the Office from "Coordinator" to "Deputy Director of the National Vaccine Program and Director, National Vaccine Program Office."

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA-20, Functions under the title National Vaccine Program Office (HA2) delete the first sentence and substitute the following:

The Deputy Director of the National Vaccine Program (NVP) serves as the Director, National Vaccine Program Office (NVPO) and reports directly to the Assistant Secretary for Health on activities regarding NVP.

Dated: July 5, 1990.  
 James O. Mason,  
 Assistant Secretary for Health.  
 [FR Doc. 90-16767 Filed 7-17-90; 8:45 am]  
 BILLING CODE 4160-17-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[UT-66848]

**Utah; Invitation To Participate in Coal Exploration Program Soldier Creek Coal Co.**

Soldier Creek Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Carbon County, Utah:

T. 12 S., R. 12 E., SLM, Utah  
 Sec. 31, lots 1-4, NW 1/4 NE 1/4, S 1/2 NE 1/4, E 1/2 W 1/2, SE 1/4  
 Containing 585.20 acres

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155 and to J.T. Paluso, Soldier Creek Coal Company, P.O. Box I, Price, Utah 84501. Such written notice must be received within thirty days after publication of this notice in the Federal Register.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Soldier Creek Coal Company, is available for public review during normal business hours in the BLM Office, (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU-66848.

Ted D. Stephenson,  
 Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-16769 Filed 7-17-90; 8:45 am]  
 BILLING CODE 4310-0Q-M

[NV-930-00-4212-11; N-7573]

**Limited Opening Order; White Pine County, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides for opening of certain lands for direct sale to the White Pine County School District.

**EFFECTIVE DATE:** July 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ken Walker, District Manager, Bureau of Land Management, Ely District Office, Star Route 5—Box 1, Ely, NV 89301, (702) 289-4865.

**SUMMARY:** On June 25, 1984, Patent No. 27-74-0051 was issued to the White Pine County School District pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4) for the following described land, comprising 10 acres:

Mount Diablo Meridian, Nevada  
 T. 14 N., R. 66 E.,  
 sec. 34, E 1/2 SW 1/4 SW 1/4 SW 1/4, W 1/2 SE 1/4 SW 1/4 SW 1/4.

The School District would now like to acquire unrestricted title to the subject land pursuant to section 203 and section 209 of the Federal Land Policy and

Management Act of October 21, 1976 (43 U.S.C. 1713, 1719). Therefore, by quitclaim deed executed on February 13, 1990, the land was reconveyed to the United States. Title was accepted on June 29, 1990.

At 10 a.m. on July 18, 1990 the above-described land will become open only to disposal pursuant to section 203 and section 209 of the Act of October 21, 1976 (43 U.S.C. 1713, 1719), for the purpose of consummating a noncompetitive sale to the White Pine County School District, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations. The land will remain closed to all other forms of appropriation including the mining laws.

Dated: July 5, 1990.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90-16705 Filed 7-17-90; 8:45 am]

BILLING CODE 4310-HC-M

[ID-943-00-4214-10; IDI-7317]

### Partial Termination of Proposed Withdrawal and Reservation Lands; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The Forest Service has partially relinquished a withdrawal application affecting National Forest lands within ¼ mile of the banks of the Salmon River within the Salmon National Forest. The purpose of the withdrawal was to protect the river corridor until Congress acted on a Wild and Scenic River classification. The segment of the river for which the relinquishment application has been submitted has been classified as a recreation river and is being managed under the approved management plan for the Salmon Wild and Scenic River. This action terminates the segregative effect of the application and opens the lands to such disposition as may, by law, be made of National Forest lands.

**EFFECTIVE DATE:** August 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1597.

1. Notice of an application, serial number I-7317, for withdrawal and reservation of lands was posted in the Land Office records September 27, 1973. The applicant agency has cancelled its application insofar as it affects those public lands along the Salmon River from Wheat Creek in section 1 T. 23 N.,

R. 14 E., upstream to North Fork in Sections 16 and 21 T. 24 N., R. 21 E.

Specifically, the lands involved in this notice of termination are all National Forest lands within ¼ mile of either bank of the Salmon River in the following described subdivisions.

#### Boise Meridian

- T. 23 N., R. 14 E.,  
secs. 1 and 12.  
T. 23 N., R. 15 E.,  
secs. 12, 13, and 24.  
T. 24 N., R. 15 E.,  
sec. 36.  
T. 23 N., R. 16 E.,  
secs. 18 to 20, inclusive, 25 to 30, inclusive,  
32, and 34 to 36, inclusive.  
T. 23 N., R. 17 E.,  
secs. 13 to 16, inclusive, 19 to 24, inclusive,  
29 and 30.  
T. 23 N., R. 18 E.,  
secs. 1 to 3, inclusive, 8 to 10, inclusive, and  
16 to 20, inclusive.  
T. 24 N., R. 18 E.,  
secs. 25 and 34 to 36, inclusive.  
T. 24 N., R. 19 E.,  
secs. 13, 17, 19 to 25, inclusive, and 27 to 29,  
inclusive.  
T. 24 N., R. 20 E.,  
secs. 19 to 21, inclusive, 23 to 30, inclusive,  
and 33 to 35, inclusive.  
T. 24 N., R. 21 E.,  
secs. 16 to 21, inclusive.

The areas described are in Lemhi and Idaho Counties.

2. Pursuant to the regulations contained in 43 CFR Subpart 2091, the lands described above will be at 9:00 a.m. on August 15, 1990, relieved of the segregative effect of the above mentioned application and opened to such disposition as may, by law, be made of National Forest lands.

Dated: July 9, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-16716 Filed 7-17-90; 8:45 am]

BILLING CODE 4310-GG-M

### Fish and Wildlife Service

#### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 744922

*Applicant:* Curt Uptain, Sanger, CA.

The applicant requests a permit to live-trap Tipton kangaroo rats (*Dipodomys n. nitratoides*) for the Arvin Land Fill Site, in Bakersfield, California.

Project requires verification trapping only.

PRT 750685

*Applicant:* George Cardin Circus Intern'l, Springfield, MO.

The applicant requests a permit to purchase in interstate commerce five tigers (*Panthera tigris*) from Patricia Zerbini, of Williston, Florida, for educational displays. These tigers will be exported and imported for similar displays in the future.

PRT 746017

*Applicant:* Terry Van Loenen, Austin, TX.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd of J. Troskie, Middleberg Plaas, Somerset East, Cape Province, Republic of South Africa for enhancement of survival of the species.

PRT 750631

*Applicant:* Darrell & Lucille Trapp, Delavan, WI.

The applicant requests a permit to purchase in foreign commerce and import two pairs of captive-hatched Aleutian Canada geese (*Branta canadensis leucopareia*) from Rick Ortlieb, Kortright Waterfowl Park, Guelph, Canada, for the purpose of enhancement of propagation.

PRT 750268

*Applicant:* National Zoological Park, Washington, DC.

The applicant requests a permit to export one female Cuban crocodile (*Crocodylus rhombifer*) to the Chester Zoo, England, for breeding purposes.

PRT 748224

*Applicant:* International Animal Exchange, Inc. Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce five male and two female captive-born entellus langurs (*Presbytis entellus thersites*) to the Monkey Center Co., Ltd., Taipei, Taiwan, for captive breeding and display purposes. This is an amendment to a Federal Register notice that was published on May 15, 1990, which identified only two male langurs to be exported.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 430, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: July 12, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-16699 Filed 7-17-90; 8:45 am]

BILLING CODE 4310-55-M

### Minerals Management Service

#### Environmental Documents Prepared for Proposed Oil and Gas Operations on Gulf of Mexico Outer Continental Shelf (OCS)

**AGENCY:** Minerals Management Service, U.S. Department of the Interior.

**ACTION:** Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals in the Gulf of Mexico OCS.

**SUMMARY:** The Minerals Management

Service (MMS), in accordance with Federal Regulations (40 FR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Oryx Energy Company, four exploratory wells, SEA No. R-2505	High Island Area, East Addition, South Extension, Block A-384, Lease OCS-G 3316, 118 miles south of Jefferson County, Texas.	January 31, 1990.
Oryx Energy Company, one exploratory well, SEA No. R-2562	High Island Area, East Addition, South Extension, Block A-384, Lease OCS-G 3316, 118 miles south of Jefferson County, Texas.	May 18, 1990.
Freeport-McMoRan Resource Partners, sulphur development activities, SEA No. N-3425.	Main Pass Area, Block 299, Lease OCS-G 9372, 15 miles east of the Mississippi River Delta.	May 2, 1990.
CNG Producing Company, five exploratory wells, SEA No. N-3519	High Island Area, East Addition, South Extension, Block A-402, Lease OCS-G 11408, 118 miles southeast of the nearest coastline of Texas.	January 4, 1990.
Santa Fe International Corporation, one exploratory well, SEA No. N-3570.	High Island Area, East Addition, South Extension, Blocks A-373 and A-374, Leases OCS-G 7367 and 11405, 105 miles southeast of the nearest coastline in Texas.	April 11, 1990.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 89-099.	West Cameron Area, South Addition, Block 532, Lease OCS-G 2224, 75 miles south of Cameron Parish, Louisiana.	March 15, 1990.
ARCO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-106A.	Eugene Island Area, Block 175, Lease OCS 0438, 60 miles south of Vermilion Parish, Louisiana.	December 13, 1990.
Walter Oil and Gas Corporation, structure removal operations, SEA No. ES/RS 90-009.	Galveston Area, Block 385, Lease OCS-G 8132, 32 miles south of Brazoria County, Texas.	December 11, 1990.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/RS 90-017.	Main Pass Area, Block 92, Lease OCS-G 1500, 10 miles southeast of the Chandeleur Islands, Saint Bernard Parish, Louisiana.	December 15, 1990.
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 90-023.	Ship Shoal Area, Block 119, Lease OCS 069, 24 miles south of Terrebonne Parish, Louisiana.	February 20, 1990.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/RS 90-025.	Mustang Island Area, East Addition, Block A-65, Lease OCS-G 3928, 42 miles southeast of Matagorda Island, Calhoun County, Texas.	March 15, 1990.
ODECO Oil & Gas Company, structure removal operations, SEA Nos. ES/SR 90-026 and 90-027.	Ship Shoal Area, Blocks 114 and 93, Leases OCS 064 and 063, 18 miles south of Terrebonne Parish, Louisiana.	March 15, 1990.
Walter Oil and Gas Corporation, structure removal operations, SEA No. ES/SR 90-028.	Eugene Island Area, Block 90, Lease OCS-G 4824, 24 miles south of Iberia Parish, Louisiana.	March 9, 1990.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 90-029.	Ship Shoal Area, Block 237, Lease OCS-G 3168, 45 miles south of Terrebonne Parish, Louisiana.	May 22, 1990.
OXY USA Inc., structure removal operations, SEA No. ES/SR 90-030.	Mustang Island Area, East Addition, Block A-51, Lease OCS-G 3925, 72 miles east of Kenedy County, Texas.	March 14, 1990.
OXY USA Inc., structure removal operations, SEA No. ES/SR 90-031.	Brazos Area, South Addition, Block A-76, Lease OCS-G 1752, 40 miles southeast of Matagorda County Texas.	March 15, 1990.
Placid Oil Company, structure removal operations, SEA No. ES/SR 90-032.	High Island Area, Block 232, Lease OCS-G 6172, 30 miles southeast of Galveston Island, Galveston County, Texas.	May 14, 1990.
Placid Oil Company, structure removal operations, SEA No. ES/SR 90-032A.	High Island Area, Block 232, Lease OCS-G 6172, 30 miles southeast of Galveston Island, Galveston County, Texas.	June 5, 1990.
Conoco Inc., structure removal operations, SEA No. ES/SR 90-033	West Delta Area, N/2 Block 67, Lease OCS-G 4894, 17 miles southeast of Jefferson Parish, Louisiana.	May 23, 1990.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-034.	Eugene Island Area, Block 119, Lease OCS 049, 23 miles south of St. Mary Parish, Louisiana.	March 9, 1990.
Texaco USA, structure removal operations, SEA No. ES/SR 90-035	East Cameron Area, South Addition, Block 265, Lease OCS 0972, 82 miles south of Cameron Parish, Louisiana.	May 14, 1990.
Texaco USA, structure removal operations, SEA No. ES/SR 90-037 and 90-038.	Vermilion Area, Block 57, and South Marsh Island Area, North Addition, Block 217, Leases OCS 0554 and OCS 0910, 14 miles south of Vermilion Parish, Louisiana.	May 25, 1990.
Corpus Christi Oil & Gas Company, structure removal operations, SEA No. ES/SR 90-039.	Brazos Area, Block 438, Lease OCS-G 4845, 10 miles southeast of Matagorda County, Texas.	May 24, 1990.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-040.	West Cameron Area, Block 171, Lease OCS-G 1997, 26 miles south of Cameron Parish, Louisiana.	May 16, 1990.
Unocal Corporation, structure removal operations, SEA No. ES/SR 90-041.	Eugene Island Area, Block 32, Lease OCS 0196, 20 miles south of St. Mary Parish, Louisiana.	May 4, 1990.
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 90-042.	Matagorda Island Area, Block 657, Lease OCS-G 4139, 10 miles south of Calhoun County, Texas.	April 4, 1990.
Walter Oil and Gas Corporation, structure removal operations, SEA No. ES/SR 90-043.	Eugene Island Area, Block 90, Lease OCS-G 4824, 24 miles south of Iberia Parish, Louisiana.	May 16, 1990.
Seagull Energy E&P Inc., structure removal operations, SEA No. ES/SR 90-044.	South Timbalier Area, Block 175, Lease OCS-G 1258, 39 miles south of Terrebonne Parish, Louisiana.	May 21, 1990.

Activity/Operator	Location	Date
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-045.	Eugene Island Area, Block 126, Lease OCS-052, 20 miles southeast of Terrebonne Parish, Louisiana.	May 22, 1990.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-047.	Ship Shoal Area, Block 199, Lease OCS 0594C, 43 miles south of Terrebonne Parish, Louisiana.	May 31, 1990.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-049 and 90-050.	Ship Shoal Area, Block 72, Lease OCS 060, and South Pelto Area, Block 10, Lease OCS-G 2925, 6 miles south of Terrebonne Parish, Louisiana.	May 16, 1990.
Enron Oil & Gas Company, structure removal operations, SEA No. ES/SR 90-051.	Vermilion Area, Block 97, Lease OCS-G 5410, 28 miles south of Vermilion Parish, Louisiana.	June 6, 1990.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-058 and 90-059.	Vermilion Area, Block 23, Lease OCS-G 2866, 5 miles south of Vermilion Parish, Louisiana.	May 21, 1990.
Samedan Oil Corporation, structure removal operations, SEA No. ES/SR 90-062 and 90-063.	East Cameron Area, Block 215, Lease OCS-G 3297, 64 miles south of Cameron Parish, Louisiana.	May 16, 1990.
Chevron U.S.A. Inc, structure removal operations, SEA No. ES/SR 90-068.	South Timbalier Area, Block 134, Lease OCS 0461, 30 miles south of Lafourche Parish, Louisiana.	June 7, 1990.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

**FOR FURTHER INFORMATION CONTACT:** Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 9, 1990.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 90-16718 Filed 7-17-90; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-308]

### Certain Key Blanks For Keys of High Security Cylinder Locks; Notice of Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Korea Trading International, Inc.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 10, 1990.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**WRITTEN COMMENTS:** Interested persons may file written comments with the Commission concerning termination of

the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202-252-1802.

By order of the Commission.

Issued: July 10, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-16721 Filed 7-17-90; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 346)]

### CSX Transportation, Inc.— Abandonment in Fulton County, GA; Findings

The Commission has issued a Certificate and Decision authorizing CSX Transportation, Inc., to abandon its 0.48-mile line of railroad between milepost 4.39 at Glenwood Avenue and milepost 4.87 at Memorial Drive, in Atlanta, Fulton County, GA. The certificate will become effective August 17, 1990, unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable

the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than July 28, 1990. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade by July 28, 1990.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

*Decided:* July 11, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

*Secretary.*

[FR Doc. 90-16743 Filed 7-17-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31690]

**Dallas Area Rapid Transit—Acquisition and Operation Exemption—Rail Lines of Missouri Pacific Railroad Co.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition and operation by Dallas Area Rapid Transit of 31.2 miles of the following railroad lines of the Missouri Pacific Railroad Company in Dallas and Denton Counties, TX: (1) The Garland Line between mileposts D-763.0 and P-750.749; (2) the Carrollton Line between mileposts K-758.4 and K-741.3; and (3) the East Dallas Line between (a) Mileposts 213.024 and 211.439, and (b) mileposts 210.704 and 210.078. The exemption is subject to standard labor protective conditions.

**DATES:** This exemption will not be effective until completion of the Commission's environmental review and a further decision. Petitions for reconsideration must be filed by August 2, 1990.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31690 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and
- (2) Petitioners' representatives: Lonnie E. Blaydes, Jr., 601 Pacific Avenue, Dallas, TX 75202. Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar, 202-275-7245. (TDD for hearing impaired: (202) 275-1721)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service [202] 275-1721.)

*Decided:* July 11, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

*Secretary.*

[FR Doc. 90-16744 Filed 7-17-90; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF JUSTICE**

**Lodging of Consent Decree; United States v. Allied Chemical Corp. et al.**

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 3, 1990, a proposed consent decree in *United States v. Allied Chemical Corp., et al.*, and *United States v. Chemical & Pigment Corp., et al.*, was lodged with the United States District Court for the Northern District of California. The actions were brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act for cleanup of a portion of the Concord Naval Weapons Station located in Concord, California and for the recovery of costs expended by the United States in connection with the Site.

The consent decree is entered into between the United States and the Getty Oil Company. The Decree requires the defendant to pay to the Defense Environmental Restoration Fund the sum of \$50,025 in exchange for a release from liability.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Allied Chemical Corp., et al.*, D.O.J. Ref. 90-11-3-26.

The proposed consent decree may be examined at the office of the

Department of Justice, 301 Howard Street, Suite 870, San Francisco, California. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of \$1.10 for copying costs payable to the "United States Treasurer."

Richard B. Stewart,

*Assistant Attorney General, Environment & Natural Resources Division.*

[FR Doc. 90-16707 Filed 7-17-90; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree Under Clean Water Act**

In accordance with Departmental policy, notice is hereby given that on May 8, 1990, a proposed Consent Decree in *United States v. Ocqueoc Paving Company*, Case No. 89-CV-10083-BC was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree resolves an action alleging violations of the Clean Air Act and the New Source Performance Standards for Hot Mix Asphalt facilities, by requiring the Ocqueoc Paving Company to maintain compliance with the Act and to pay to the United States a civil penalty in the amount of \$2,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ocqueoc Paving Company*, D.J. reference # 90-5-2-1-1325.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, 204 Federal Building, 1000 Washington Street, Bay City, Michigan 48707, the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1515,

10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.00 (10 pages at 10 cents per page) payable to the Treasurer of the United States.

Richard B. Stewart,  
Assistant Attorney General, Land and  
Natural Resources Division.  
[FR Doc. 90-16708 Filed 7-17-90; 8:45 am]  
BILLING CODE 4410-01-M

#### Lodging of Consent Decree in United States v. Vasi, Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Vasi, et al.*, Civil Action No. 5:90CV1187 was lodged with the United States District Court for the Northern District of Ohio. This action was brought for the cleanup of the Summit National Superfund site ("Site") located in Deerfield Township, Portage County, Ohio, and for the recovery of costs expended by the United States in connection with the site.

The consent decree is entered into between plaintiffs, the United States and the State of Ohio, and numerous parties referred to as "Settling Defendants," including the current owner of the site and 27 parties that are alleged to have arranged for treatment or disposal of hazardous substances at the site. The decree requires the Settling Defendants to finance, design, and perform a remedial action at the Site. The main components of this remedial action include: (1) Incineration of approximately 13,000 cubic yards of contaminated soil, sediments and debris, (2) collection of contaminated groundwater using a pipe and media drain system to be installed downgradient from the site, (3) treatment of collected groundwater at a treatment plant to be constructed at the site, (4) installation and maintenance of a permeable cap over the site, to prevent contact with residual contamination present, while allowing infiltration of precipitation to carry contaminants into the pipe and media drain system, (5) controlling access to the site, and (6)

establishing restrictions on future use of the site that might damage or impair the remedy. The Decree also requires the Settling Defendants to pay all oversight costs incurred by the U.S. Environmental Protection Agency and the State in the future.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Vasi, et al.*, DJ Ref. #90-11-2-318.

The proposed consent decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, suite 500, Ohio 44114, and at the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Decree may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the U.S. Department of Justice. The proposed Consent Decree package consists of a 124-page Consent Decree and 245 pages of Exhibits. You may request a copy of the Consent Decree with or without exhibits. Please specify in the letter of request whether or not exhibits are requested. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of \$36.90 (ten cents per page copying costs) payable to the "United States Treasurer." A request for a copy of the proposed Consent Decree without exhibits should be accompanied by a check in the amount of \$12.40 payable to the "United States Treasurer."

Richard B. Stewart,  
Assistant Attorney General, Environmental  
and Natural Resources Division.  
[FR Doc. 90-16702 Filed 7-17-90; 8:45 am]  
BILLING CODE 4410-01-M

#### Membership of the Department of Justice's Senior Executive Service (SES) Performance Review Boards

AGENCY: Department of Justice.

**ACTION:** Notice of the Department of Justice's 1990 SES Performance Review Boards.

**SUMMARY:** Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purpose of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and bonuses, and to make recommendations to the Deputy Attorney General regarding the final ratings to be assigned and SES bonuses to be awarded.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Oser, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530. Telephone: (202) 514-6788.

Paul W. Mathwin,  
Executive Secretary, Senior Executive  
Resources Board.  
[FR Doc. 90-16709 Filed 7-17-90; 8:45 am]

BILLING CODE 4410-01-M

#### Antitrust Division

##### National Cooperative Research Act of 1984—The SQL Access Group

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group ("the Group") on June 5, 1990 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the *Federal Register* pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750).

The identities of the additional parties to the Group are:

Cincom Systems Inc., 3350 Ruther  
Avenue, Cincinnati, Ohio 45220.  
Progress Software Corporation, 5 Oak  
Park, Bedford, Massachusetts 01730.

Joseph H. Widmar,  
Director of Operations, Antitrust Division.

[FR Doc. 90-16706 Filed 7-17-90; 8:45 am]

BILLING CODE 4410-01-M

**Drug Enforcement Administration****Manufacturer of Controlled Substances; Registration**

By Notice dated March 2, 1989, and published in the Federal Register on March 14, 1989, [54 FR 10597], Ganes Chemicals, Inc., Industrial Park Road, Pennsville, NJ 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 2, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-16689 Filed 7-17-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-59]

**Robert A. Leslie, M.D.; Revocation of Registration**

This proceeding was initiated on June 21, 1989, when the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued an Order to Show Cause to Robert A. Leslie, M.D. of Lawndale, California (Respondent). The Order to Show Cause sought to revoke DEA Certificate of Registration, AL0033186, previously issued to Respondent, and to deny any pending applications for renewal of such registration. The statutory basis for the proposed action was that Respondent's continued registration is inconsistent with the public interest. 21 U.S.C. 823 and 824.

Respondent timely requested a hearing but later requested that he instead be allowed to submit a written statement regarding his position. 21 CFR 1301.54(c). The administrative law judge acceded to this request and terminated judicial proceedings. Upon receipt of Respondent's statement, it along with the Government's investigative file, was transmitted to the Office of the Administrator for final action. Additional documents subsequently forwarded by Respondent were also considered by the Acting Administrator. Having considered Respondent's statement along with the Government's investigative file, the Acting Administrator now issues this final order pursuant to 21 CFR 1301.54(e).

The Acting Administrator finds that during 1985 and 1986, Respondent was employed at the Westside Medical Clinic in Laguna Beach, California. On July 7, 1985, Investigator McCullough of the Board of Medical Quality Assurance for the State of California (Board), visited Respondent in an undercover capacity. The Investigator told Respondent that she did not like to go out drinking but wanted the same effect. The Investigator requested Preludin, Doriden and codeine. Respondent prescribed Tylenol with codeine #2, a Schedule IV analgesic. Respondent told the Investigator she could have the Preludin next time. At no time did the Investigator give any indication of being ill or in pain.

Investigator McCullough returned on July 23, 1985, and again requested Preludin. She told Respondent that she wanted them for extra energy. Respondent dispensed 90 phendimetrazine 35mg. Phendimetrazine is a Schedule IV stimulant often used in conjunction with short-term weight loss. Investigator McCullough was not overweight.

On October 13, 1985, another Board Investigator, Marlicia Voisard, visited Respondent at the Westside Medical Clinic. She was told she could not see the doctor unless she complained of something. She told the doctor she had a backache. Respondent prescribed Talwin. Talwin is a Schedule IV analgesic. Investigator Voisard also requested Valium. She gave no reason other than she liked taking it. Respondent prescribed 30 Valium 10mg.

On October 31, 1985, Investigator Voisard returned to the Westside Medical Clinic accompanied by a third Board Investigator, Sheila Cassidy. Investigator Voisard stated she was there for a refill. Respondent prescribed Valium and Talwin. Investigator Cassidy also saw Respondent and

received a quantity of phendimetrazine. Respondent told Investigator Cassidy to meet him at a certain restaurant if she wanted something stronger. That same day, the two Investigators met with Respondent at the restaurant as arranged. Respondent gave Investigator Cassidy a prescription for Preludin. Preludin is a Schedule II stimulant containing phendimetrazine. She requested another prescription for Valium. She explained she was getting high but had nothing to bring her down. She told Respondent she would use another name and address, and fill the prescriptions at different pharmacies. Respondent issued her the prescription for Valium.

On November 7, 1985, Investigator Voisard returned to the Westside Medical Clinic. She presented a phony driver's license with a different name. She informed Respondent she had headaches due to recently giving birth and that she was breast feeding. She requested Fastin and Tylenol with codeine. Fastin is a brand name for phentermine, another Schedule IV stimulant used for the short-term treatment of obesity. Investigator Voisard is not overweight. Respondent prescribed both drugs.

On that same day Investigator Cassidy visited Respondent's office. She asked Respondent for Doriden and codeine. Doriden is a Schedule III hypnotic labeled for the treatment of insomnia. Respondent told her that he couldn't give her Doriden until he got to know her better. He stated that he believed his prescriptions were being watched and he had to be careful. The Investigator dumped per purse out to show it did not contain a recorder and asked for something else with which to get high, such as Dalmane and codeine, instead of Doriden. Dalmane is a Schedule IV hypnotic containing flurazepam. It is prescribed for the treatment of insomnia. Respondent prescribed 60 Tylenol with codeine and 30 Dalmane.

On November 21, 1985, Investigator Voisard, using a different assumed name, returned to the clinic and requested Preludin. She was weighed and Respondent issued a prescription for 30 Preludin. She also requested Valium. When asked why, she responded, "I just want it." Respondent issued her a prescription for 30 Valium.

On the same day Investigator Cassidy visited the clinic. She told Respondent that she was there for her Doriden as was promised. She told Respondent she did not have any medical problems, and was not sick but wanted the drug to get high. Respondent issued two

prescriptions to Investigator Cassidy for Doriden and Valium. He instructed her to not show the prescriptions to his office staff.

On January 7, 1986, Respondent issued prescriptions for Valium and Preludin to Investigator Voisard and Valium, Preludin and Doriden to Investigator Cassidy. They expressly requested the drugs and neither complained of illness nor gave any other reason for needing the prescriptions.

On October 9, 1986, in the Municipal Court of Long Beach, Los Angeles County Judicial District, Respondent was charged with criminal violations of the California Business and Professions Code. Respondent was convicted on eight counts of unlawfully prescribing or dispensing the controlled substances Doriden, Preludin, Valium, phendimetrazine, Talwin, Dalmane, and Tylenol with codeine. On May 15, 1988, Respondent's convictions were affirmed on appeal.

On August 17, 1988, California Board of Medical Quality Assurance (Board) filed an accusation seeking to suspend Respondent's medical license based on his convictions. A hearing was held July 6, 1989, before a state administrative law judge. The state administrative law judge recommended, *inter alia*, that Respondent's medical license be revoked. That revocation, however, would be stayed for five years, during which time Respondent would be on probation. The Board adopted that recommendation with the provision that Respondent be suspended from the practice of medicine for ninety days effective March 23, 1990.

The Administrator may revoke a registration under 21 U.S.C. 824(a)(4) when the registrant has committed such acts as will render his registration under 21 U.S.C. 823 inconsistent with the public interest. Section 823 lists the following factors to be considered. 1. The recommendation of the appropriate State licensing board or professional disciplinary authority. 2. The applicant's experience in dispensing or conducting research with respect to controlled substances. 3. The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances. 4. Compliance with applicable State, Federal, or local laws relating to controlled substances. 5. Such other conduct which may threaten the public health and safety. In this case, the second, third, fourth and fifth factors are most relevant.

Respondent, in his defense, has submitted numerous documents most of which are irrelevant to the issues at hand. Respondent's main contentions

are that the testimony used to convict him as perjured and that he was entrapped. The Acting Administrator finds no merit in either of these contentions. Finally, Respondent informs the Acting Administrator that he is suing his attorney for malpractice. Respondent's private civil suit against his attorney has no bearing in this matter.

Respondent has been convicted of crimes relating to controlled substances. He has been suspended by a state licensing authority. Respondent's practice of prescribing dangerous controlled substances, on request and without legitimate medical need, leaves little doubt that his continued registration is contrary to the public interest. Far from being contrite, Respondent is unrepentant. He continues to blame everyone but himself for his unlawful actions. His registration must be revoked.

Having concluded therefore, that there is a lawful basis for the revocation of respondent's DEA registration, and having further concluded that the public interest demands such revocation, it is the Acting Administrator's decision that Respondent's registration be revoked. Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, and delegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator orders that DEA Certificate of Registration, AL0033186, previously issued to Robert A. Leslie, M.D., be, and it hereby is, revoked. Any pending applications for renewal of such registration are hereby denied.

This order is effective August 17, 1990.

Dated: July 5, 1990  
Terrence M. Burke,  
Acting Administrator.  
[FR Doc. 90-16733 Filed 7-17-90; 8:45 am]  
BILLING CODE 4410-09-M

[Docket No. 88-96]

#### Sewanee Pharmacy Revocation of Registration

On September 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Sewanee Pharmacy (Respondent) of Old RR Station Hwy 64, Sewanee, Tennessee 37375, proposing to revoke the pharmacy's DEA Certificate of Registration, BS0473518, and to deny any pending applications for the renewal of such registration as a retail pharmacy under 21 U.S.C. 823 (f). The Order to Show Cause alleged that the continued registration of the pharmacy

would be inconsistent with the public interest as that term is used in 21 U.S.C. 823 (f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Nashville, Tennessee on July 18, 1989. On January 19, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and, on February 28, 1990, the administrative law judge transmitted the record in this proceeding to the then Administrator. The Acting Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent pharmacy is located in Sewanee, Tennessee, a small rural community with a business district spanning approximately two blocks. Douglas Dye became manager of Respondent pharmacy in July 1984 and purchased it in July 1986.

On December 30, 1987, Respondent purchased 12,000 dosage units of phendimetrazine, a Schedule III controlled substance legitimately used for weight loss, from a pharmaceutical supplier. As a result of this purchase, the Tennessee Board of Pharmacy conducted an on-site inspection of Respondent in April 1988. The inspection included an accountability audit of Respondent's handling of phendimetrazine from May 1, 1987 to March 2, 1988. Initially, the audit indicated that Respondent had an overage of approximately 3,300 dosage units of phendimetrazine. Additionally, the audit revealed that Respondent had filled an unusually large number of prescriptions for phendimetrazine issued by a single local doctor, Russell Leonard, M.D.

At the Pharmacy Board's request, a DEA Investigator contacted all of Respondent's known and potential suppliers in order to determine whether all purchases of phendimetrazine were recorded in Respondent's files. As a result, the Investigator obtained invoices which had not been provided to the auditors by Douglas Dye, for five sales of phendimetrazine, representing an additional 16,000 dosage units. The Pharmacy Board then revised the audit computations to reflect these additional phendimetrazine purchases. The revised

audit revealed a shortage of 11,798 dosage units of phendimetrazine.

After reviewing the phendimetrazine prescriptions, DEA began an investigation of Respondent pharmacy and Dr. Leonard. Dr. Leonard was, at the time of the events giving rise to the investigation, registered with DEA to prescribe and handle controlled substances, but the address on his DEA registration was a post office box at the University of the South, located in Sewanee, Tennessee. After considerable effort was made to locate Dr. Leonard's office, the Investigator was directed to Pounds Away Club. The Investigator observed people entering Pounds Away Club and leaving approximately two minutes later.

The owner of Pounds Away Club informed the Investigator that it was a weight loss "club" which employed Dr. Leonard two to three hours a week as a consultant. Neither the owner nor the club has ever been registered with DEA to handle controlled substances. The owner told the Investigator that Dr. Leonard lectured groups at Pounds Away Club two to three hours a week, but did not perform any physical examinations of the members, that members would receive either a prescription for phendimetrazine, or a vial of the drug, every time they visited Pounds Away Club, and that Dr. Leonard would sign the prescriptions, pre-printed with the drug name and quantity, and leave them with the owner. The members did not receive either the prescriptions or the vials directly from Dr. Leonard; rather, the owner would write the member's name on a prescription form which Dr. Leonard had signed in advance. The member would then take the prescription to either a pharmacy or, in some instances, to the receptionist at Pounds Away Club to receive a vial of phendimetrazine.

The Investigator interviewed approximately fifteen to twenty individuals who were members of Pounds Away Club and had prescriptions for phendimetrazine filled at Respondent pharmacy. All of these individuals indicated that they did not have a doctor/patient relationship with Dr. Leonard, and only went to Pounds Away Club and Dr. Leonard because other doctors would not prescribe phendimetrazine for them.

The investigation revealed that in 1984, Respondent pharmacy filed only a small number of prescriptions written by Dr. Leonard for phendimetrazine. Subsequently, the number of prescriptions increased dramatically. Respondent filled several thousand of these prescriptions between May 1, 1987

and March 2, 1988. The prescriptions were commercially pre-printed with both the name of the drug and the quantity, 84 tablets. The DEA Investigator testified at the hearing in this matter, that in his sixteen years as a DEA Investigator, he had never before encountered prescriptions pre-printed with this information. The Investigator also testified that Douglas Dye told him that occasionally "a car full" of people with phendimetrazine prescriptions from Dr. Leonard would arrive at Respondent pharmacy. Frequently, one person would come into the pharmacy with several prescriptions, each in a different name, and sometimes these prescriptions were still bound by the glue from top of the prescription pad.

Douglas Dye testified at the hearing that despite the large number of prescriptions for individuals receiving this diet drug, the regularity with which various individuals received it, and the fact that these were commercially pre-printed prescriptions, he never questioned his customers regarding the operations at Pounds Away or their relationship with Dr. Leonard because he had no reason to doubt Dr. Leonard's medical judgment or to distrust him. Douglas Dye simply stated that he knew satisfied people who had lost weight with the program at Pounds Away, and that he inquired no further.

Another issue raised in these proceedings is whether Respondent pharmacy properly distributed controlled substances. Pursuant to 21 CFR 1307.11, a practitioner, such as a retail pharmacy, who is registered with DEA to dispense controlled substances may distribute a limited quantity of these substances to another practitioner if certain criteria are met, including, among others, the following: the practitioner to whom the distribution is made is registered with the DEA to dispense that substance; the number of units distributed, the date the distribution is made, and manner of distribution are recorded by the distributor; and the total number of dosage units distributed in a single year does not exceed five percent of the total amount of all controlled substances dispensed and distributed by the practitioner/distributor in that year. There is no requirement that a practitioner/distributor maintain prescriptions to document the distributions, but such a distributor is required to maintain complete, accurate and readily retrievable records pursuant to 21 U.S.C. 827(b) and 21 CFR 1304.21(a).

In May 1987, Douglas Dye, at the request of the owner of Pounds Away Club, began to distribute vials of

phendimetrazine to Dr. Leonard and Pounds Away Club to be provided to members at meetings on Wednesday nights after Respondent pharmacy had closed. It has long been held, that controlled substances may only be delivered to a DEA registered location, which Pounds Away Club was not. Douglas Dye testified that after each distribution of phendimetrazine to Pounds Away Club, he sent an invoice to the owner. The invoices listed the owner as the buyer and were sent to her home address, which also has never been registered with DEA.

Douglas Dye told the DEA Investigator that the distributions of phendimetrazine to Pounds Away Club began in May 1987 and continued for only a few weeks. During the execution of a search warrant on April 12, 1988, invoices were discovered which indicated that these distributions continued until late October 1987. Douglas Dye's failure to mention these invoices to the Investigators caused the administrative law judge to infer that Douglas Dye was attempting to understate the length of time over which these distributions took place.

After the phendimetrazine that was distributed to Pounds Away Club was dispensed to the members, Pounds Away Club returned the Respondent a "prescription" with the member's name on it and the date it was dispensed to the member. Douglas Dye stated that, although he was not legally required to do so, he maintained these "prescriptions" to monitor each customer's use of Phendimetrazine, and that he did not treat these additional records as actual prescriptions, but that he accumulated them and periodically entered them into Respondent's computer in order to keep profiles of this customers. As a result, the distributions to Pounds Away Club were memorialized at Respondent pharmacy by two different documents: Invoices billing the owner for the amounts of phendimetrazine delivered to Pounds Away Club and prescriptions in the names of the individuals who received the phendimetrazine from Pounds Away Club.

Labels were generated when either actual prescriptions and/or "prescription" records received from Pounds Away Club were entered by Douglas Dye in the computer. These labels bore the date they were generated; thus, in the case of "prescriptions" memorializing distributions, the label date was unrelated to the date on which the individual actually received the phendimetrazine. Douglas Dye placed

the computer-generated label on each prescription covering the handwritten date, thus making it appear as if all of the prescriptions were filled at Respondent on the date that they were entered into the computer.

Frequently, Douglas Dye entered into the computer more than one prescription for an individual on the same day, on successive days, or within a one-month period. Consequently, when the investigator reviewed Respondent's computerized files, it appeared that Respondent had actually filled prescriptions on the same day, on successive days or before the customer should have finished the last prescription, although that was not the case.

Although Douglas Dye stated that he did not treat the records returned from Pounds Away Club as prescriptions, he did enter them into Respondent's computer in exactly the same manner as he would any regular prescription filled by Respondent pharmacy. Respondent also maintained invoices documenting the pharmacy's distributions of phendimetrazine to Pounds Away Club, thus accounting twice for most of the drugs distributed. Consequently, those conducting the accountability audit were unable to ascertain from Respondent's files whether or not phendimetrazine was dispensed to customers at Respondent or distributed to Dr. Leonard at Pounds Away Club, and therefore, it was impossible to conduct an accurate audit of Respondent's handling of controlled substances.

Evidence presented at the hearing revealed that Dr. Leonard was incarcerated from approximately August 12, 1985, until May 9, 1987, on charges relating to failure to pay Federal income taxes. During the period of Dr. Leonard's incarceration, Respondent pharmacy filled 35 controlled substance prescriptions allegedly authorized or telephoned in by Dr. Leonard. Dr. Leonard's conviction and incarceration received a great deal of local media coverage in Sewanee, Tennessee. Residents of Sewanee stated that Dr. Leonard's conviction and incarceration were public knowledge.

The Administrator may revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered: (1) The recommendation of the appropriate State licensing board or disciplinary authority. (2) The

applicant's experience in dispensing, or conducting research with respect to controlled substances. (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances. (4) Compliance with applicable State, Federal, or local laws relating to controlled substances. (5) Such other conduct which may threaten the public health or safety." It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors, and give each factor the weight he deems appropriate. See, Henry J. Schwarz Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86-69, 53 FR 5328 (1988).

In this case the first and third factors do not apply. However, the evidence relating to Respondent's distribution, dispensing and record keeping, should be considered in determining whether or not Respondent's continued registration threatens the public health and safety. Respondent's filling of prescriptions which were not written for a legitimate medical reason in the course of professional practice requires consideration of the second factor, as does its filling of prescriptions purportedly issued by Dr. Leonard during his incarceration. Additionally, Respondent's failure to maintain proper records of both the amounts of phendimetrazine purchased and of the final disposition of the drug, and Respondent's repeated delivery of a controlled substance to a non-registered location require consideration of the fourth factor.

The administrative law judge noted that 21 CFR 1306.04(a) provides that:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a *corresponding responsibility* rests with the pharmacist who fills the prescription. \* \* \* [Emphasis supplied.]

The administrative law judge, in her opinion, cites several Circuit Court cases which basically state that a prescription is not automatically considered legitimate just because it is issued by a practitioner. The pharmacist, in order to fulfill his corresponding responsibility, must look at the circumstances surrounding the prescription.

The record in this case established that: (1) Respondent consistently filled prescriptions submitted on commercially preprinted forms which bore both the name of the drug and the quantity; (2) these prescriptions were regularly and consistently brought into the pharmacy by individuals who did not appear to need phendimetrazine, a weight loss drug; (3) the number of prescriptions for phendimetrazine written by Dr. Leonard and filled by Respondent increased dramatically to the point that Respondent filled several thousand of these prescriptions between May 1987 and March 1988; (4) Douglas Dye informed the investigators that occasionally "a car full" of people with phendimetrazine prescriptions would arrive at Respondent and one person would bring several prescriptions, still bound together, into the pharmacy; (5) Douglas Dye testified that he personally knew some of the individuals who brought the phendimetrazine prescriptions in the pharmacy, but he never inquired about their relationship with Dr. Leonard or Pounds Away Club; (6) Douglas Dye admitted to the DEA Investigator that he had personally visited Pounds Away Club to speak with the owner about individuals bringing prescriptions into Respondent who did not appear to need the drug, and had observed "business as usual" and that Dr. Leonard was *not* present; and (7) Respondent filled numerous prescriptions allegedly authorized by Dr. Leonard during the nine months that the doctor was incarcerated.

The administrative law judge concluded that Douglas Dye did not fulfill his "corresponding responsibility," for he either knew or should have known that these prescriptions were not issued in the course of professional practice for a legitimate medical purpose.

There is ample evidence in the record to demonstrate Respondent's failure to comply with applicable Federal controlled substance laws. Respondent distributed controlled substances to a non-registered location. It failed to maintain complete and accurate records of all controlled substances it received, in that five purchase invoices were missing from Respondent's records. Respondent's distribution records failed to contain the name, address and DEA registration number of the person to whom the substances were distributed. Further, Respondent failed to maintain its records in a readily retrievable manner, as evidenced by the dual records maintained for those substances distributed to Pounds Away Club.

The administrative law judge concluded that in light of Respondent's failure to fulfill its "corresponding responsibility" to ensure that prescriptions are legitimate, and its poor history of compliance with Federal controlled substance laws and regulations, Respondent's continued registration with DEA would be inconsistent with the public interest. Accordingly, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked.

The Acting Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent filled thousands of prescriptions which it knew or should have known were not issued legitimately. Further, by keeping records of distribution of phendimetrazine to Pounds Away Club, as well as prescriptions that reflected the dispensing of the very same substance, Respondent entirely eliminated any chance for the Drug Enforcement Administration to conduct an accurate accountability audit. Such audits are necessary to determine whether substances are possibly being diverted into the illicit market. Respondent's actions reflect a total disregard for the tremendous responsibility which accompanies DEA registration.

Accordingly, the Acting 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 BS0473518, previously issued to Sewanee Pharmacy, be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be and they hereby are, denied. This order is effective August 17, 1990.

Dated: July 5, 1990.

Terrence M. Burke,  
Acting Administrator.

[FR Doc. 90-16734 Filed 7-17-90; 8:45 am]

BILLING CODE 4410-09-M

#### Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958 (i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section

1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacturer of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 14, 1990, by letter, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration for additional drug codes as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
1-phenylcyclohexylamine (7460) .....	II
Meperidine (pethidine) (9230) .....	II

A maximum of 25 grams of each of the above listed substances will be imported annually and will be utilized in research or analytical studies (21 U.S.C. 952 (a)(2)(c)).

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 17, 1990.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 2, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-16690 Filed 7-17-90; 8:45 am]

BILLING CODE 4410-09-M

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-52]

#### Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

**DATES:** Comments are requested by August 17, 1990. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

**ADDRESSES:** Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-\_\_\_\_\_), Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 755-1430.

#### Reports

**Title:** Market Assessment for Airborne Lidar Topographical Mapping System.

**OMB Number:** New.

**Type of Request:** New collection.

**Frequency of Report:** One time only.

**Type of Respondent:** Businesses or other for-profit.

Number of Respondents: 100.  
 Responses per Respondent: 1.  
 Annual Responses: 100.  
 Hours per Response: 1.0.  
 Annual Burden Hours: 100.

**Abstract-Need/Uses:** NASA Wallops/Goddard has developed a Topographical Mapping Technique using Lidar equipped aircraft whose aerial position is located by Global Positioning Satellites. Several sources have started an interest in the commercialization of this system. In order to ensure the maximum utility of the system, if adopted by the commercial area, we want to conduct a survey of potential users to determine their awareness of, interest in, and use of the system.

Dated: July 9, 1990.

D.A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 90-16730 Filed 7-17-90; 8:45 am]

BILLING CODE 7530-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

### Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding on no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

#### Environmental Assessment

##### Identification of the Proposed Action

The proposed amendment would revise Technical Specification (TS) section 5.3.1, "Fuel Assemblies" to allow the replacement of two stainless steel clad fuel rods with two stainless steel filler rods for Cycles 16 and 17. The proposed action is in accordance with the licensee's amendment request dated May 9, 1990 and supplemented on June 8, 1990.

##### The Need for the Proposed Action

Current TS 5.3.1 does not address the option of using stainless steel filler rods in place of fuel rods. The proposed amendment is needed because as a result of the fuel reconstitution effort for Cycle 16 two stainless steel clad fuel rods had to be replaced with stainless steel filler rods for Cycles 16 and 17.

#### Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the Technical Report Supporting Cycle Operations (TRSCO) using NRC-approved methodology. The TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the TS change described is a refinement, rather than a substantial change in the operation of the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

#### Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

#### Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck dated October 1973.

#### 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

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated May 9, 1990 and June 8, 1990. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown Connecticut 06547.

Dated: at Rockville, Maryland, this 13th day of July 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects-1/II, Office of Nuclear Reactor Projects.

[FR Doc. 90-16905 Filed 7-17-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

### Connecticut Yankee Atomic Power 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. DPR-61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

#### Environmental Assessment

##### Identification of the Proposed Action

The proposed amendment would remove Technical Specification (TS) Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule" and delete references to Table 4.4-5 in TS Surveillance Requirement 4.4.9.1.2 and Bases section, "Low Temperature Overpressure Protection Systems." The proposed action is in accordance with the licensee's amendment request dated February 16, 1990 and supplemented on March 29 and June 6, 1990.

##### The Need for the Proposed Action

During the refueling for Cycle 16 CYAPCO decided to remove the thermal shield and the attached surveillance capsule holders. Since the surveillance capsules have been removed and not reinstalled in the reactor vessel, the TS as currently written cannot be satisfied. As such the specific withdrawal schedule table, Table 4.4-5 and the direct references to that Table in Surveillance Requirement 4.4.9.1.2 and Bases section, "Low Temperature Overpressure Protection Systems" need to be removed. The licensee will

continue to meet the requirements of 10 CFR part 50 appendix H by using an Integrated Surveillance Program as allowed by appendix H.

#### *Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been compensated by the licensee's proposed Integrated Surveillance Program. The Integrated Surveillance Program meets the criteria provided in section ILC of 10 CFR part 50 appendix H and the staff has concluded that the Integrated Surveillance Program will provide the equivalent information necessary for the Haddam Neck Plant to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region. The TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

#### *Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

#### *Alternative Use of Resources*

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck, dated October 1973.

#### *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*

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated February 16, March 29, and June 6, 1990. These letters are available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and at the Russell Library, 123 Broad Street, Middletown Connecticut 06547.

Dated at Rockville, Maryland, this 13th day of July 1990.

For the Nuclear Regulatory Commission,  
**John F. Stolz,**  
*Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-16906 Filed 7-17-90; 8:45 am]  
BILLING CODE 7590-01-M

#### **Public Workshop on "The Probability of Liner Failure in a Mark-I Containment" by T.G. Theofanous, et al.**

July 12, 1990.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public workshop.

**SUMMARY:** The NRC has supported research on the Mark-I containment drywell shell meltthrough issue for many years. In conjunction with this T.G. Theofanous, et al., prepared a draft NUREG/CR-4523 report entitled, "The Probability of Liner Failure in a Mark-I Containment." The NRC has requested the opinions of several experts in the research community and industry to conduct a peer review of the report. As part of our overall evaluation of this issue the NRC is conducting a workshop to which all the peer review panel members are invited to discuss their comments and concerns, and Professor Theofanous' response to them.

**DATES:** The workshop will be held on July 23 and 24, 1990. Written comments on matters covered in the meeting should be provided to the NRC no later than July 31, 1990.

**ADDRESSES:** The workshop will be held at the Cliff Side Inn in Harpers Ferry, West Virginia. Notification of intent to attend and written comments on the workshop should be sent to Dr. Farouk Eltawila, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Dr. Farouk Eltawila, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-3525.

Farouk Eltawila,  
*Chief, Accident Evaluation Branch, Division of Systems.*

[FR Doc. 90-16755 Filed 7-17-90; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-410]

#### **Nine Mile Point Nuclear Station Unit No. 2 Biweekly Notice Applications and Amendments to Operating Licenses Involving no Significant Hazards Considerations Correction**

In notice document 90-12310 beginning on page 21958, in the issue of Wednesday, May 30, 1990, make the following corrections:

In the first full paragraph, in the second column, on page 21973, in line 23, the statement in quotes "(18 months 27 25%)" should be corrected to read "(18 months plus or minus 25%)."

In the third column, on page 21985, the heading with reads "Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York" should be corrected to read "Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York."

Dated at Rockville, Maryland, this 3rd day of July 1990.

For the Nuclear Regulatory Commission,  
**Robert E. Martin,**  
*Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-16754 Filed 7-17-90; 8:45 am]  
BILLING CODE 7590-01-M

#### **OFFICE OF PERSONNEL MANAGEMENT**

##### **Announcement of Public Meetings**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of public meetings on the distribution of the undesignated funds raised in the Combined Federal Campaign.

**SUMMARY:** The undesignated money collected in the Combined Federal Campaign (CFC) is currently distributed by a formula mandated by Congress. The formula specifies that these funds will be distributed to the below-named groups in the following percentages:

Local United Way—82%,  
International Service Agencies federation—7%,  
National Voluntary Health Agencies federation—7%, and  
Other eligible agencies or federations as determined by the LFCC—4%.

Since this formula was established, new federations and many unaffiliated groups have become eligible to participate in the CFC. Therefore, it is appropriate for the Office of Personnel Management (OPM) to review the formula to evaluate if a more equitable method of distribution of these funds is warranted, as was mandated by the Congress.

I have established a panel to hold a series of public meetings to solicit the opinions and suggestions of all the various CFC participants regarding the distribution formula for undesignated money. This is the only topic that will be discussed during the public meetings.

These meetings have been scheduled in various locations to give any interested parties, especially the Federal donors, the opportunity to present their views and suggestions. The Deputy Director of OPM will chair these meetings and appropriate local Federal officials will be asked to be members of the panel in each location. The locations and dates are:

Washington, DC—Monday, July 30, 1990,  
Office of Personnel Management—room 1350, 1900 E Street, NW.

Dallas, TX—Thursday, August 2, 1990,  
Federal Building, 110 Commerce Street, room 6C40.

Salt Lake City, UT—Friday, August 3, 1990,  
Bureau of Mines Building, 729 Arapsee Drive, BOM Conference Room.

Atlanta, GA—Tuesday, August 14, 1990,  
Richard B. Russell Federal Building, 76 Spring Street, SW., room 808.

Kansas City, MO—Friday, August 17, 1990,  
Federal Office Building, 801 East 12th Street, room 110.

New York, NY—Tuesday, August 21, 1990,  
Federal Building, 26 Federal Plaza (use Duane St. Entrance), room 3004.

Seattle, WA—Wednesday, September 5, 1990, Jackson Federal Building, 915—2nd Avenue, South Auditorium.

Los Angeles, CA—Thursday, September 6, 1990, VA Medical Center, West Los Angeles, Building 218, room 1, Wilshire & Sawtelle Boulevard.

All of these meetings will start at 10 a.m. local time except Los Angeles which will start at 10:30 a.m.

**DATE:** The dates of these meetings are listed in the above summary.

**FOR FURTHER INFORMATION CONTACT:** Merri Jo Clear, Special Assistant to the Deputy Director, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606-1001.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-16701 Filed 7-17-90; 8:45 am]

BILLING CODE 6325-01-M

### Revision of Standard Form 86

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The Office of Personnel Management is considering revising Standard Form 86, Questionnaire for Sensitive Positions, which is completed by persons performing, or seeking to perform, sensitive duties for the Federal government. The information collected on this form is used by the Office of Personnel Management to initiate the background investigation required under E.O. 10450, Security Requirement for Government Employment, issued April 27, 1953; by E.O. 10577 (5 CFR Rule V), issued November 23, 1954; or by various public laws. The Office of Personnel Management would like to receive comments on whether, or how, Standard Form 86 should be revised.

**DATES:** Comments should be received within 30 calendar days from July 18, 1990.

**ADDRESSES:** Send or deliver comments to: Vernon B. Parker, Counselor to the Director, Office of Personnel Management, 1900 E Street, NW., room 5315, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Vernon B. Parker.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-16735 Filed 7-17-90; 8:45 am]

BILLING CODE 6325-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28196; File No. GSCC-90-05]

#### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Proposed Rule Change Relating to the Authority of GSCC to Pledge and Assign Collateral

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> notice is hereby given that on June 14, 1990, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's rules as per exhibit A.

#### II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to adopt certain technical rule changes designed to further clarify and confirm the authority of GSCC to pledge and assign collateral deposited with it, and securities held overnight, and to obtain temporary financing. These changes would help ensure the ability of GSCC to obtain credit on a timely basis to the extent needed. (Ordinarily, GSCC will look to obtain credit from the banks that it has entered into agreement with to act on its behalf as a clearing agent and/or clearing fund custodian.) Express language is included in these proposed rule changes to make clear that they would not affect GSCC's existing obligations to its members to return or to allow substitution for or withdrawal of cash, securities and letters of credit held by GSCC, and to deliver securities held overnight to members, under the circumstances and within the timeframes specified in its Rules.

The proposed rule change will help ensure the ability of GSCC to obtain temporary credit on a timely basis and in a manner consistent with preserving the rights of its members to their

<sup>1</sup> 15 U.S.C. 78s(b)(1).

collateral and, thus, the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

#### B. SRO's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

#### C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the rule change have not yet been solicited or received. GSCC members will be notified of the rule filing, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to SR-GSCC-

90-05 and should be submitted by August 8, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

Dated: July 11, 1990.  
Margaret H. McFarland,  
Deputy Secretary.

#### Exhibit A

Additional language is in italics.  
Deleted language is in [brackets]

#### New section 12 (Corporation's Authority to Pledge and Assign) of rule 4 (Clearing Fund and Loss Allocation)

*In furtherance of the rights of the Corporation pursuant to these Rules, the Corporation shall have full power and authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all securities, repurchase agreements, deposits or other instruments in which cash deposits of Members are invested, and any securities or letters of credit pledged or deposited by any Member to secure to an open account indebtedness to the Clearing Fund or otherwise to collateralize its obligations to the Corporation, for the purpose of securing loans made to the Corporation or other obligations incurred by the Corporation, in each case incident to the clearance and settlement business of the Corporation. Such loans or obligations shall be on terms and conditions deemed necessary or advisable by the Corporation in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any member to the Corporation for which such property was pledged to or deposited with the Corporation. Notwithstanding the above, the Corporation shall remain obligated to each Member to return, and to allow substitution for or withdrawal of, cash, securities, and letters of credit pledged or deposited by a Member as Clearing Fund deposit or to secure an open account indebtedness to the Clearing Fund, or otherwise to collateralize such Member's obligations to the Corporation, under the circumstances and within the timeframes specified in these Rules.*

#### Revised section 6 (Use of Clearing Fund Deposits) of rule 4

... [Any securities, repurchase agreements, deposits, or other instruments in which cash deposits are invested, and any securities or letters of credit pledged or deposited by any Member to secure an open account indebtedness to the Clearing Fund, may be pledged by the Corporation as security for loans made to it.]

#### Revised section 7 (Inter-Dealer Brokers) of rule 4

\* \* \* \* \*  
[Letters of credit issued on behalf of an Inter-Dealer Broker and any securities, repurchase agreements, or deposits in which cash deposits are invested, may be pledged

by the Corporation as security for loans made to the Corporation.]

#### Revised Section 7 (Obligation to Receive Securities) of rule 12 (Securities Settlement)

The Corporation may, but shall have no obligation to, accept receipt, and otherwise shall return, Eligible Netting Securities delivered to it that either are securities that have not been designated by Report to be delivered to the Corporation on such Business Day (hereinafter, the "Exception Securities") or are securities that have been delivered to it at other than the appropriate System Value (hereinafter, the "Mispriced Securities"). If a Netting Member makes such a delivery to the Corporation (hereinafter, an "Exception Delivery"), such Member shall pay, or reimburse the Corporation, for any costs, expenses, and charges incurred by the Corporation as the result of such Exception Delivery, and such Member may be subject to fine by the Corporation if the Board, in its sole discretion, determines that the Member (hereinafter, the "Exception Delivery Member") has, on a frequent basis without good cause, made Exception Deliveries to the Corporation.

If the Corporation accepts an Exception Delivery of Exception Securities, the Exception Delivering Member shall be deemed to have loaned such Exception Securities to the Corporation, and such Exception Securities shall constitute a Net Long Position of such Member. The Corporation shall, as soon as practicable, redeliver to such Member a like amount of Eligible Netting Securities with the same CUSIP number, with such redelivery to be made at the System Value of such securities as of the Business Day on which the Exception Delivery was made. If the Corporation accepts an Exception Delivery of Mispriced Securities, an appropriate Clearance Difference Amount adjustment shall be made, pursuant to rule 13, between the Corporation and the Netting Member that made such Exception Delivery. *Until redelivery of such Exception Securities, the Corporation shall have all of the incidents of ownership of the Exception Securities, including both the right to transfer such Exception Securities and the right to pledge, repledge, assign or create a security interest in such Exception Securities to secure financing obtained by the Corporation to receive or carry such Exception Securities or for any other purpose.*

#### Revised section 8 (Obligation to Facilitate Financing) of rule 12 (Securities Settlement)

If the Corporation deems it appropriate, in its sole discretion, in order to obtain financing necessary for the provision of the securities settlement service contemplated by these Rules, including, without limitation, fail financing of securities positions arising out of the delivery by Netting Members to the Corporation of Eligible Netting Securities, the Corporation may create, and each Netting Member shall not take any action to adversely affect the creation of, such security interests in Eligible Netting Securities in favor of any entity or entities, including any depository institution, from which the Corporation, in its sole discretion, deems it

<sup>2</sup>17 CFR 200.30-3(a)(12).

necessary or desirable to obtain and maintain such financing. Any such financing obtained by the Corporation may be on terms and conditions deemed necessary or advisable by the Corporation in its sole discretion. Any such security interests created by the Corporation in any Eligible Netting Securities may be to secure an amount greater, and may extend for a period of time longer, than the obligation of any Netting Member to the Corporation relating to such Eligible Netting Securities. Notwithstanding the above, the Corporation shall remain obligated to make delivery to Members of Eligible Netting Securities under the circumstances and within the timeframes specified in these Rules.

[FR Doc. 90-18731 Filed 7-17-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17581; 812-7444]

**Technology Funding Partners III, L.P., et al.; Application**

July 11, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Technology Funding Partners III, L.P. ("TFP III"), Technology Funding Venture Partners IV, An Aggressive Growth Fund, L.P. ("TFP IV"), Technology Funding Venture Partners V, An Aggressive Growth Fund, L.P. ("TFP V"), Technology Funding Inc. ("TFI"), and Technology Funding Ltd. ("TFL").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 17(d) and Rule 17d-1 permitting certain joint transactions that are otherwise prohibited by section 57(a)(4) and rule 17d-1.

**SUMMARY OF APPLICATION:** TFP III, TFP IV, and TFP V (the "Partnerships") are affiliated persons, as defined by the 1940 Act. TFI and TFL serve as the managing general partners (the "Managing General Partners") of the Partnerships. Applicants seek an order under section 17(d) of the 1940 Act and rule 17d-1 thereunder permitting joint investments by the Partnerships in securities. Absent relief, the transactions would be prohibited by section 57(a)(4) and rule 17d-1.

**FILING DATE:** The application was filed on December 18, 1989 and amendment on April 20, 1990 and June 14, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 6, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Technology Funding Inc., 2000 Alameda de las Pulgas, San Mateo, California 94403.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

**Applicants' Representations**

1. Each of TFP III, TFP IV, and TFP V is a limited partnership organized under Delaware law pursuant to an Amended and Restated Limited Partnership Agreement (with respect to each, a "Partnership Agreement") that has elected to be regulated as a business development company under the 1940 Act. Each has been designed to provide individuals with the ability to participate primarily in venture capital investments in emerging companies or in unaffiliated venture capital partnerships (the "Portfolio Companies"). The investment objectives of each Partnership are long-term capital appreciation from venture capital investments and preservation of limited partner capital through risk management and active involvement with the Portfolio Companies.

2. TFI and/or TFL serve as the Managing General Partners of the Partnerships. TFI is a California corporation and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). TFL is a California limited partnership and is registered as an investment adviser under the Advisers Act. TFL has seven individual general partners, 24 limited partners, and two special limited partners. The seven individual general partners of TFL

own 71% of the outstanding stock of TFI; the remaining stock is owned by TFI employees and outside investors.

3. TFP III, TFP IV, and TFP V each have five general partners, three of which are individuals (the "Individual General Partners"). The Individual General Partners of each Partnership will include at least a majority of independent general partners (the "Independent General Partners"), defined to be individuals who are not "interested persons" of such Partnership within the meaning of the 1940 Act. Each of the Partnerships has received an exemptive order determining that its Independent General Partners are not "interested persons" of the Partnership or of certain other entities specified therein within the meaning of section 2(a)(19) of the 1940 Act solely by reason of being a general partner of the Partnership and a co-partner of one of the general partners. See Investment Company Act Release Nos. 15764 (June 2, 1987) (TFP III); 16626 (November 8, 1988) (TFP IV); and 17422 (April 12, 1990) (TFP V). Each Partnership's Partnership Agreement provides that, if at any time the number of Independent General Partners is less than a majority of the general partners, the general partners shall, within 90 days, designate and admit one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners.

4. With respect to TFP III and TFP IV, the Independent General Partners of each Partnership and up to one representative for each of the Managing General Partners serve on a management committee for each Partnership; TFP V is managed and controlled solely by its Individual General Partners. Pursuant to their respective Partnership Agreements, TFP III's and TFP IV's management committees (and, with respect to TFP V, the Individual General Partners alone) have complete and exclusive authority to manage and control each Partnership, except for those specific activities for which, under the supervision of the management committee (or, with respect to TFP V, the Individual General Partners), the Managing General Partners will be responsible. The management committee (or, with respect to TFP V, the Individual General Partners) will provide overall guidance and supervision with respect to each Partnership's operations and will perform all duties that the 1940 Act imposes on the boards of directors of business development companies organized in corporate form.

5. The Partnerships have identical investment objectives, and applicants believe that there are a significant number of potential investments that may be desirable investments for more than one of the Partnerships. Applicants request an order pursuant to section 17(d) of the 1940 Act and rule 17d-1 thereunder to permit the purchase of securities by a Partnership jointly with one or both of the other Partnerships in transactions which are otherwise prohibited by section 57(a)(4) and rule 17d-1 (a "co-investment transaction").

#### Applicants' Legal Analysis and Conclusions

1. Applicants submit that the request for the order authorizing joint transactions on a prospective basis is supported by a number of factors. First, the rationale for establishing each of TFP III, TFP IV, and TFP V is to provide access to venture capital investments not generally available to individual investors who meet the Partnerships' respective suitability standards. The availability of more than one of the Partnerships as a potential participant in a co-investment transaction would significantly reduce the cost of searching for an alternative venture capital investment when a potential investment appears to satisfy the investment objectives of one of the Partnerships. Second, applicants believe that the continuing substantive obligations and fiduciary duties imposed on the Managing General Partners and the Independent General Partners of each Partnership provide significant protections for limited partners. The Independent General Partners of each Partnership will receive a written recommendation from its Managing General Partners in support of any co-investment transaction that the Managing General Partners may propose and will have the right, in their sole discretion, to determine not to participate in the transaction. In addition, the Managing General Partners will have no financial interest in the Partnerships other than their general partner interests in the participating Partnerships and their management fee and expense reimbursement arrangements with the Partnerships (as described in the application). Further, the terms and conditions of any co-investment transaction will be identical for each Partnership.

2. Applicants cite the following precedent, among others, in support of their request: Allied Capital Corporation, Investment Company Act Release No. 17155 (Sept. 26, 1989); ML Venture Partners I, L.P., *et al.*, Investment Company Act Release No.

16551 (Sept. 7, 1988); Equitable Capital Partners, L.P., *et al.*, Investment Company Act Release No. 16522 (Aug. 11, 1988); and Massachusetts Mutual Life Insurance Company, *et al.*, Investment Company Act Release No. 16601 (Oct 19, 1988).

#### Applicants' Conditions

Applicants have agreed that any relief will be subject to the following conditions:

1. The Partnerships will not have common Independent General Partners. The general partners of each Partnership will approve co-investment transactions in advance. The general partners of each Partnership will be provided with periodic information, compiled by the Managing General Partners, listing all venture capital investments made by the other Partnerships.

2. (a) Before a co-investment transaction will be effected, the Managing General Partners will make an initial determination on behalf of each Partnership regarding investment suitability. Following this determination, a written investment presentation respecting the proposed co-investment transaction will be made to the general partners of each Partnership, except that such information need not be distributed to the general partners of any Partnership that, at that time, does not have funds available for investment. Such information will include the name of each Partnership that proposes to make the investment and the amount of each proposed investment. The Managing General Partners will maintain at each Partnership's office a copy of the written records detailing the factors considered in any such preliminary determination.

(b) The information regarding the Managing General Partners' preliminary determinations will be reviewed by the Independent General Partners of each Partnership. The general partners of each Partnership, including a majority of the Independent General Partners, will make an independent decision as to whether and how much to participate in an investment based on what is appropriate under the circumstances. If a majority of the Independent General Partners of any Partnership determine that the amount proposed to be invested by the Partnership is not sufficient to obtain an investment position that they consider appropriate under the circumstances, that Partnership will not participate in the joint investment. Similarly, a Partnership will not participate in a co-investment transaction if a majority of its independent General Partners determine that the amount proposed to be invested

is an amount in excess of that which is determined to be appropriate under the circumstances. A Partnership will only make a joint investment with another Partnership if a majority of the Independent General Partners of that Partnership conclude, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the Partnership on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the Partnership's investment objectives and policies as recited in filings made by the Partnership under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to limited partners; and

(iii) The investment by one or more of the other Partnerships would not disadvantage the Partnership in the making of such investment, maintaining its investment position, or disposing of such investment, and that participation by the Partnership would not be on a basis different from or less advantageous than that of other affiliated participants.

(c) the Independent General Partners will, for purposes of reviewing each such recommendation of the Managing General Partners, request such additional information from the Managing General Partners as they deem necessary to the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate to the reasonable exercise of this oversight function.

3. The general partners of each Partnership, including a majority of the Independent General Partners, will make their own decision and have the right to decide not to share a particular investment with another Partnership. There will be no consideration paid to the Managing General Partners (or affiliated persons of such affiliated persons), directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction. However, the Managing General Partners will continue to receive amounts under their management fee and expense reimbursement arrangements with the Partnerships and may participate indirectly in a co-investment transaction through their existing general partner interests in the Partnerships.

4. Each Partnership will be entitled to consider purchasing a portion of each co-investment transaction equal to the ratio of that Partnership's net assets to the total net assets of all Partnerships that have determined to participate in the co-investment transaction, provided that each Partnership may determine not to take its full allocation where a majority of the Independent General Partners and a majority of the general partners of the Partnership determines that to do so would not be in the best interest of the Partnership. Once a Partnership is fully invested, its net assets will no longer be included in the denominator of this fraction. All "follow-on" investments, including the exercise of warrants or other rights to purchase securities of the issuer, will be treated in the same manner as the initial co-investment transaction, except that the denominator in the fraction will consist solely of the net assets of those Partnerships that participated in the initial co-investment transaction.

5. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, at the same unit consideration, and on the same terms and conditions, and the approvals will be made in the same period. If one Partnership elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by another Partnership, notice will be given to the other Partnership at the earliest practical time and such Partnership will be given the opportunity to participate in such disposition at the same time for the same unit consideration and in amounts proportional to its respective holdings of such securities. The Managing General Partners will formulate a recommendation as to participation by such Partnership in such a disposition and provide the recommendation to the Independent General Partners of such Partnership. A Partnership will participate in any such disposition if a majority of its Independent General Partners determines that such action is fair and reasonable to the Partnership, is in the best interest of the Partnership, and does not involve overreaching of the Partnership or its limited partners by the Managing General Partners. Each Partnership will bear its own expenses associated with any such disposition. The Independent General Partners of each Partnership will record in their records the Managing General Partners' recommendation and their decision as to whether to participate in such disposition, as well as the basis for their decision that such action is fair and

reasonable to, and is in the best interest of, the Partnership.

6. A decision by a Partnership (i) Not to participate in a co-investment transaction, (ii) to take less or more than its full allocation, or (iii) not to sell, exchange, or otherwise dispose of a co-investment in the same manner and at the same time as the other Partnerships electing to participate shall include a finding that such decision is fair and reasonable to the Partnership and not the result of overreaching of the Partnership or its limited partners by the Managing General Partners. The Independent General Partners of a Partnership will be provided quarterly for review all information concerning co-investment transactions made by the Partnerships, including co-investment transactions in which a Partnership has declined to participate, so that they may determine whether all co-investment transactions made during the preceding quarter, including those co-investment transactions that were declined, complied with the conditions set forth above. In addition, the Independent General Partners of a Partnership will consider at least annually the continuing appropriateness of the standards established for co-investment transactions by a Partnership, including whether use of the standards continues to be in the best interest of the Partnership and its limited partners and does not involve overreaching of the Partnership or its limited partners on the part of any party concerned.

7. The Independent General Partners of each Partnership will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h) of the 1940 Act, and each Partnership will otherwise maintain all records required by the 1940 Act. All records referred to or required under these conditions will be available for inspection by the SEC and will be preserved permanently, the first two years in an easily-accessible place.

8. No general partner or affiliated person of any general partner will participate in a transaction with a Partnership unless a separate exemptive order with respect to such transaction has been obtained. For this purpose, the term "participate" shall not include either the Managing General Partners' existing general partner interests in, or their normal management fee and expense reimbursement arrangements with, each Partnership.

9. No co-investment transaction will be made pursuant to the requested order respecting Portfolio Companies in which any applicant or affiliated person of any applicant has previously acquired an

interest, provided that this prohibition shall not be applicable to any previous investment specifically permitted by an order of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 90-16732 Filed 7-17-90; 8:45 am]  
BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-90-31]

#### Petitions for Exemption; Summary of Petitions Received; 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: August 7, 1990.

**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 Regulations (14 CFR part 11).

Issued in Washington, DC, on July 11, 1990.  
Denise Donohue Hall,  
Manager, Program Management Staff, Office  
of the Chief Counsel.

#### Petitions for Exemption

*Docket No.:* 24983.

*Petitioner:* Iowa LTD.  
*Sections of the FAR Affected:* 14 CFR  
61.58(c).

*Description of Relief Sought:* To extend Exemption No. 4702 that allows a pilot to complete the entire 24-month pilot-in command check in an FAA-approved simulator provided that the pilot taking the flight check has completed at least three takeoffs and landings within the preceding 90 days in a Boeing 707. Exemption No. 4702 will expire on August 31, 1990.

*Docket No.:* 26164.

*Petitioner:* National Aeronautic Association.  
*Sections of the FAR Affected:* 14 CFR  
135.251 and 135.353.

*Description of Relief Sought:* To allow exclusion of part-time instructors and other individuals who earn less than \$2,500 a calendar year from the requirements of §§ 135.251 and 135.353.

#### Dispositions of Petitions

*Docket No.:* 22822.

*Petitioner:* T.B.M., Inc.  
*Sections of the FAR Affected:* 14 CFR  
91.45.

*Description of Relief Sought/Disposition:* To allow petitioner to conduct ferry flights with one engine inoperative on McDonnell Douglas DC-6 and DC-7 aircraft, without obtaining a special permit for each flight. Grant, July 2, 1990, exemption No. 5204.

*Docket No.:* 23907 and 25589.

*Petitioner:* Bolivar Aviation.  
*Sections of the FAR Affected:* 14 CFR  
Section 141.65.

*Description of the Relief Sought/Disposition:* To extend Exemption No. 4045B that allows petitioner to recommend graduates of its FAA-approved certification courses of flight instructor and airline transport pilot certificates and ratings without taking the FAA's written tests; to extend Exemption No. 4967 that allows petitioner to recommend graduates of its approved certification course for flight instructor certificates and ratings without taking the FAA practical tests; to combine Exemption Nos. 4045B and 4967 into one exemption. Grant, June 18, 1990, Exemption No. 5198.

*Docket No.:* 26267.

*Petitioner:* Jacqueline A. Julio.  
*Sections of the FAR Affected:* 14 CFR  
121.311(b).

*Description of the Relief Sought/Disposition:* To allow petitioner to be secured by a personal safety belt and held on her caregiver's lap while aboard the aircraft even though she has reached her second birthday. Grant, June 19, 1990, Exemption No. 5195.

*Docket No.:* 25789.

*Petitioner:* Martin Aviation, Inc.  
*Sections of the FAR Affected:* 14 CFR  
43.3(g).

*Description of the Relief Sought/Disposition:* To allow petitioner's pilots to remove and replace passenger seats to reconfigure its aircraft for passenger and cargo operations. Partial Grant, June 21, 1990, Exemption No. 5202 (corrected exemption number).

*Docket No.:* 26137.

*Petitioner:* L.A.B. Flying Service, Inc.  
*Sections of the FAR Affected:* 14 CFR  
135.243(a).

*Description of the Relief Sought/Disposition:* To allow petitioner to operate twin-engine aircraft under visual flight rules using pilots who do not hold airline transport pilot certificates. Denial, June 29, 1990, Exemption No. 5203.

[FR Doc. 90-16765 Filed 7-17-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 12, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service

*OMB Number:* New.  
*Form Number:* 8825.  
*Type of Review:* New collection.  
*Title:* Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

*Description:* Form 8825 is used to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property. The form is filed with either Form 1065 or 1120S.

*Respondents:* Farms, Businesses or other for-profits, Small businesses or organizations.

*Estimated Number of Respondents:*  
705,000

#### Estimated Burden Hours Per

*Respondent/Recordkeeping:*  
Recordkeeping—6 hours, 28 minutes.  
Learning about the law or the form—22 minutes.  
Preparing the form—1 hour, 25 minutes.  
Copying, assembling, and sending the form to IRS—16 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 6,006,600 hours.

*OMB Number:* 1545-0034.

*Form Number:* 942 and 942PR.

*Type of Review:* Extension.

*Title:* Employer's Quarterly Tax Return for Household Employees; Planilla Para la Declaracion Trimestral Del Patrono de Empleados Domesticos.

*Description:* Form 942 is used by household employers to report social security tax on their household employees. Household employers can also use Form 942 to report income tax withheld. Form 942PR is for household employers in Puerto Rico.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:*  
414,437.

#### Estimated Burden Hours Per

	942	942PR
<i>Respondent/Recordkeeping:</i>		
Recordkeeping.	20 minutes.....	7 Minutes.
Learning about the law or the form.	16 minutes.....	16 minutes.
Preparing the form.	18 minutes.....	13 minutes.
Copying, assembling, and sending the form to IRS.	20 minutes.....	14 minutes.

*Frequency of Response:* Quarterly.

*Estimated Total Recordkeeping/Reporting Burden:* 2,045,814 hours.

*OMB Number:* 1545-0052.

*Form Number:* 990-PF and 4720.

*Type of Review:* Revision.

*Title:* Return of Private Foundation of section 4947(a)(1) Trust Treated as a Private Foundation; Return of Certain Excise Taxes on Charities and Other

Persons Under chapters 41 and 42 of the Internal Revenue Code.

**Description:** Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940-1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a) trusts may file Form 990-PF in lieu of Form 1041 under the provisions of section 6033 and 6012.

**Respondents:** Non-profit institutions.

**Estimated Number of Respondents:** 43,067.

**Estimated Burden Hours Per Respondent/Recordkeeping:**

	990-PF	4720
Recordkeeping.	150 hrs., 11 mins.	31 hrs., 5 mins.
Learning about the law or the form.	27 hrs., 11 mins.	15 hrs., 31 mins.
Preparing the form.	31 hrs., 46 mins.	22 hrs., 17 mins.
Copying, assembling, and sending the form to IRS.	18 mins .....	1 hr., 37 mins.

**Frequency of Response:** Annually  
**Estimated Total Recordkeeping/Reporting Burden:** 8,870,034 hours.

**OMB Number:** 1545-0227.

**Form Number:** 6251.

**Type of Review:** Revision.

**Title:** Alternative Minimum Tax—Individuals.

**Description:** Form 6251 is used by individuals having adjustments or tax preference items or a taxable income above certain exemption amounts together with credits against their regular tax. The form provides a computation of the alternative minimum tax which is added to tax liability. The information is needed to see whether the taxpayer is complying with the law.

**Respondents:** Individuals or households.

**Estimated Number of Respondents:** 118,300.

**Estimated Burden Hours Per**

**Respondent/Recordkeeping:**

Recordkeeping—2 hours, 17 minutes.  
Learning about the law or the form—1 hour, 10 minutes.

Preparing the form—1 hour, 20 minutes.

Copying, assembling, and sending the form to IRS—20 minutes.

**Frequency of Response:** Annually

**Estimated Total Recordkeeping/**

**Reporting Burden:** 805,898 hours.

**Clearance Officer:** Garrick Shear (202)

535-4296, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

**OMB Reviewer:** Milo Sunderhauf (202)

395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90-16700 Filed 7-17-90; 8:45 am]

BILLING CODE 4830-01-M

## Customs Service

### Performance Review Boards—Appointment of Members

**AGENCY:** U.S. Customs Service, Department of Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and make recommendations regarding performance appraisals and performance awards.

**EFFECTIVE DATE:** July 1, 1990.

**FOR FURTHER INFORMATION CONTACT:**

Loretta J. Goerlinger, Director, Office of Human Resources, U.S. Customs Service, Post Office Box 636, Washington, DC 20044; (202) 634-5270.

### Background

There are two Performance Review Boards in the U.S. Customs Service.

#### Performance Review Board 1

The purpose of this board is to review the performance appraisals of Senior Executives rated by the Commissioner and Deputy Commissioner. The members are:

Daniel R. Black, Associate Director, Office of Compliance Operations, Bureau of Alcohol, Tobacco & Firearms

Stephen E. Garman, Deputy Director, U.S. Secret Service

John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff, and

Trade Enforcement), Department of Treasury

Charles F. Rinkevich, Director, Federal Law Enforcement Training Center

#### Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all Senior Executives except those rated by the Commissioner or Deputy Commissioner. All are Assistant Commissioners or Regional Commissioners, of the U.S. Customs Service. The members are:

#### Assistant Commissioners

Samuel H. Banks, Office of Commercial Operations

John E. Hensley, Office of Enforcement  
James W. Shaver, Office of International Affairs

Charles W. Winwood, Office of Inspection and Control

Edward F. Kwas, Office of Management  
William F. Riley, Office of Information Management

George D. Heavey, Office of Internal Affairs

#### Regional Commissioners

Philip W. Spayd, Northeast Region  
Anthony N. Liberta, New York Region  
Richard G. McMullen, North Central Region

George Corcoran, Southeast Region  
John R. Grimes, South Central Region  
James C. Piatt, Southwest Region  
Quintin L. Villanueva, Pacific Region

Dated: June 1, 1990.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 90-16355 Filed 7-17-90; 8:45 am]

BILLING CODE 4820-02-M

## UNITED STATES INFORMATION AGENCY

### Public Diplomacy U.S. Advisory Commission; Meetings

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW. on July 18 from 10 a.m. to 11:30 a.m.

The meeting will be closed to the public because it will involve discussion of classified information relating to TV Marti. (5 U.S.C. 552b(c)(1)).

Please call Gloria Kalamets, (202) 619-4468 for further information.

Dated: July 12, 1990.

Bruce S. Gelb,

Director.

[FR Doc. 90-16724 Filed 7-17-90; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register

Vol. 55, No. 138

Wednesday, July 18, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## AFRICAN DEVELOPMENT FOUNDATION

### Board of Directors Meeting

A meeting to be held on Friday, 20 July 1990, (55-FR-28133, July 9, 1990) has been cancelled.

### CONTACT PERSON FOR MORE

**INFORMATION:** Ms. Janis McCollim, 673-3916.

Leonard H. Robinson, Jr.,

President.

[FR Doc. 90-16835 Filed 7-16-90; 9:44 am]

BILLING CODE 6116-01-M

## FEDERAL ENERGY REGULATORY COMMISSION

### "FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: July 9, 1990, 55 FR 28715.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 11, 1990, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to Item CAG-40 scheduled on the Agenda of July 11, 1990:

Item No.	Docket No. and Company
CAG-40	CP89-835-000 and 001, Columbia Gas Transmission Corp.
	CP89-661-000 and 001, Algonquin Gas Transmission Co.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16822 Filed 7-13-90; 4:37 pm]

BILLING CODE 6717-02-M

## U.S. RAILROAD RETIREMENT BOARD

### Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 24, 1990, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

- (1) Reimbursement of IRS Interest Charges
- (2) Regulations—Part 203, Employees Under the Act
- (3) Regulations—Part 216, Eligibility for an Annuity
- (4) Regulations—Part 255, Recovery of Overpayments
- (5) Regulations—Part 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act

(6) Regulations—Part 323, Nongovernmental Plans for Unemployment or Sickness Insurance

(7) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations

(8) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits

(9) Cape Cod and Hyannis Railroad—Application of Coverage Ruling Without Retroactive Effect with Respect to Liability for Contributions Due Under the Railroad Unemployment Insurance Act

(10) Employee Status—DJR Ic.—Legal Opinion L-90-58

(11) Employee Status—Art Hathaway Backhoe Service

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 380-4920.

Dated: July 13, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-16924 Filed 7-16-90; 1:17 pm]

BILLING CODE 7905-01-M

# Corrections

Federal Register

Vol. 55, No. 138

Wednesday, July 18, 1990

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 THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6785

[CO-930-00-4214-10; C-48691]

#### Withdrawal of National Forest System Land for Protection of Recreational Values; CO

##### Correction

In rule document 90-15618 appearing on page 27822 in the issue of Friday, July 6, 1990, make the following correction:

In the second column, in the land description, in Sec. 14, "S1/4;" should read "S1/2;"

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-21]

#### Rules of Practice for FAA Civil Penalty Actions

##### Correction

In rule document 90-15332 beginning on page 27548 in the issue of Tuesday, July 3, 1990, make the following corrections:

1. On page 27548, in the third column, in the first full paragraph, in the first line, "April 3" should read "April 13".

2. On page 27557, in the second column, in the second paragraph, eighth line from the bottom, "any" should read "many".

3. On the same page, in the third column, in the first full paragraph, in the second line, "§ 23.208" should read "§ 13.208"

4. On the same page, in the third column, in the last paragraph, in the third line, "§ 13.210" should read "§ 13.210".

5. On page 27560, in the third column, in the first full paragraph, in the eighth line, "FAA" should read "EAA".

6. On page 27567, in the first column, in the first full paragraph, in the third line, "§ 13.205" should read "§ 13.205".

7. On the same page, in the first column, in the twelfth line from the bottom, remove the comma after "the".

8. On page 27570, in the first column, in the third paragraph, in the last line, insert "be" before "made".

9. On page 27573, in the first column, in the first full paragraph, in the twelfth line, "5127" should read "15127".

##### § 13.16 [Corrected]

10. On page 27574, in the first column, in the section heading, "13.6" should read "13.16".

11. On the same page, in the second column, in § 13.16(c), in the second line, "authority" was misspelled.

12. On page 27575, in the first column, in § 13.16(g), in the third line, insert a closed parenthesis after "(d)".

13. On the same page, in the third column, in § 13.16(l), in the sixth line from the top, "110" should read "110".

##### § 13.205 [Corrected]

14. On page 27577, in the first column, in § 13.205(b), in the eleventh line,

"§ 13.219(c)(4)" should read "§ 13.219(c)(4)".

##### § 13.210 [Corrected]

15. On page 27578, in the first column, in § 13.210(a), in the second line from the bottom of the paragraph, "§ 13.211" should read "§ 13.211".

##### § 13.234 [Corrected]

16. On page 27585, in the second column, in § 13.234(c)(1), in the sixth line, insert a comma after "support".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Office of the Assistant Secretary (Domestic Finance)

#### 17 CFR Part 401

#### Implementing Regulations for the Government Securities Act of 1986

##### Correction

In rule document 90-15359 beginning on page 27461, in the issue of Tuesday, July 3, 1990, make the following correction:

##### § 401.9 [Corrected]

On page 27463, in the third column, in § 401.9(n), in the second line, "§ 140.15a-6(b)" should read "§ 240.15a-6(b)".

BILLING CODE 1505-01-D

Wednesday, July 18, 1980

1. On page 2757, the first column in the first full paragraph in the first line, "April 7," should read "April 19."

2. On page 2757, in the second column in the second paragraph, "July" should read "July 1980," and "July 1980" should read "July 1981."

3. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

4. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

5. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

6. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

7. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

8. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

9. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

10. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

11. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

12. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

13. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

14. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

15. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

16. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

17. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

18. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

19. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

20. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

21. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

22. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

23. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

24. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

25. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

26. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

27. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

28. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

29. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

30. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

31. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

32. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

33. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

34. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

35. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

36. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

37. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

38. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

39. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

40. On page 2757, in the second column in the first full paragraph in the second line, "2008" should read "2009."

The section of the FEDERAL REGISTER contains several corrections of the following published Federal Register documents. The corrections are listed by the date of the Federal Register issue in which the corrections are published. The date of the document and the page number of the document are given in the following table.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

42 CFR Public Land Order 5782

100-200-11-14-10-C-20011

Whitetail of National Forest System

Land for Protection of Historical

Value; CO

Correction

In this document 60-13018 regarding

on page 2782 in the issue of Friday, July

6, 1980, make the following correction:

In the second column in the first

paragraph in Sec. 14, 27, "should

read "27,271,"

and "27,271,"

should read "27,271."

DATE: July 18, 1980

BY: [Signature]

TITLE: [Signature]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 18

Identical 25000 Amendment 13-211

Rules of Practice for FAA Civil Penalty

Actions

Correction

In this document 60-18032 regarding

on page 2748 in the issue of Thursday,

July 3, 1980, make the following

corrections:

1. On page 2748, in the first column

in the first full paragraph in the first

line, "April 7," should read "April 19."

2. On page 2748, in the second column

in the second paragraph, "July" should

read "July 1980," and "July 1980" should

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary

(Domestic Finance)

17 CFR Part 201

Implementing Regulations for the

Government Securities Act of 1935

Correction

In the document 60-12555 regarding

on page 2747 in the issue of Tuesday,

July 2, 1980, make the following

corrections:

1. On page 2747, in the first column

in the first full paragraph in the first

line, "April 7," should read "April 19."

2. On page 2747, in the second column

in the second paragraph, "July" should

read "July 1980," and "July 1980" should

read "July 1981."

3. On page 2747, in the second column

in the first full paragraph in the second

line, "2008" should read "2009."

4. On page 2747, in the second column

in the first full paragraph in the second

line, "2008" should read "2009."

5. On page 2747, in the second column

in the first full paragraph in the second

line, "2008" should read "2009."

6. On page 2747, in the second column

in the first full paragraph in the second

line, "2008" should read "2009."

7. On page 2747, in the second column

in the first full paragraph in the second

line, "2008" should read "2009."

Wednesday  
July 18, 1990

# Final Rule

## Part II

# Department of Housing and Urban Development

Office of the Assistant Secretary for  
Community Planning and Development

24 CFR Part 570

**Community Development Block Grants;  
Relocation, Displacement, Acquisition,  
and Replacement of Housing; Final Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Community Planning and  
Development**

**24 CFR Part 570**

[Docket No. R-90-1405; FR-2474-F-03]

RIN 2506-AA82

**Community Development Block  
Grants; Relocation, Displacement,  
Acquisition, and Replacement of  
Housing**

**AGENCY:** Office of the Assistant  
Secretary for Community Planning and  
Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth policies and requirements with respect to displacement, relocation, real property acquisition, and the replacement of low/moderate-income housing under the Community Development Block Grant programs (including the Entitlement Grants program, the State CDBG program, the HUD-Administered Small Cities program, Section 108 Loan Guarantees, and the Special Purpose Grants program), and the Urban Development Action Grant program. The rule implements the Uniform Relocation Act and its regulations, and section 509 of the Housing and Community Development Act of 1987, which amended section 104(d) of the Housing and Community Development Act of 1974. As revised, section 104(d) provides that grants under sections 108 and 119 of the Housing and Community Development Act of 1974 may be made only if the grantee/recipient certifies that it is following a residential anti-displacement and relocation assistance plan.

**EFFECTIVE DATE:** October 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Huecker, Director, or Melvin Geffner, Deputy Director, Relocation and Real Estate Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-0336. (This is not a toll-free number). Hearing- or speech-impaired persons may call the TDD number—(202) 708-4594.

**SUPPLEMENTARY INFORMATION:**

**Information Collection Requirements**

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for

review under the Paperwork Reduction Act of 1980 and assigned OMB control number 2508-0102. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**Background**

On August 17, 1988, HUD published an interim rule (53 FR 31234) setting forth policies and requirements governing displacement, relocation, real property acquisition, and replacement of low/moderate-income housing under the Community Development Block Grant programs (including the Entitlement Grants programs, the State CDBG program, and the HUD-Administered Small Cities program, Section 108 Loan Guarantees, and Special Purpose Grants program), and the Urban Development Action Grant program. One of the major purposes of the rule was to implement revisions to section 104(d) of the Housing and Community Development Act of 1974 (the "Act") made by section 509 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Revised section 104(d) provides that grants under sections 108 and 119 of the Act may be made only if the grantee certifies that it is following an anti-displacement and residential relocation plan. The Department received 31 comments. These comments, and the Department's response, are discussed below.

**Section 104(d) Requirements**

Under section 104(d), the residential anti-displacement and relocation assistance plan must provide for one-for-one replacement of occupied and vacant occupiable low/moderate-income dwelling units demolished or converted to another use in connection with a development project assisted under Part 570; and for relocation assistance for all low/moderate-income persons who occupied housing that is demolished or occupied a low/

moderate-income housing unit that is converted to a use other than for low/moderate-income housing.

**I. Suggestions Inconsistent with Section 104(d)**

In many instances, commenters urged HUD to take action which would be beyond the scope of this rulemaking and which would require congressional action (e.g., the repeal of section 104(d), the provision of additional Federal resources to offset the cost of implementation of the statute, etc.). Other commenters urged HUD to adopt regulatory provisions that, in the Department's view, would conflict with section 104(d) of the Act. Some suggestions that HUD rejected because they are at odds with section 104(d) included:

—The elimination of the requirement that grantees/recipients certify that they are following a residential anti-displacement and relocation plan. This requirement is imposed under section 104(d) of the Act.

—The deletion of the one-for-one replacement of low/moderate-income housing requirement. Section 104(d)(2)(A)(i) imposes this requirement.

—The reduction or elimination of the requirement that the one-for-one replacement housing units shall be designed to remain affordable for ten years from the time of initial occupancy. This ten-year requirement is imposed under section 104(d)(2)(ii).

—The deletion of the displaced household's option to elect to receive relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 *et seq.*) as an alternative to relocation assistance under section 104(d) of the Act. Section 104(d)(2)(B) states that anti-displacement and relocation assistance plans must provide this option to displaced households. (In addition, the URA was amended to expand coverage to all persons displaced as a direct result of rehabilitation, demolition, or acquisition for a federally assisted project. For HUD-assisted programs, this change covers all persons displaced on or after April 2, 1989.)

—The imposition of a cap on the amount of replacement housing assistance that may be provided to the displaced households or a limitation on replacement housing assistance to those resources that are available through vouchers, section 8 certificates, and project loan repayments. Section 104(d)(2)(A)(iii) describes how replacement housing assistance is to be calculated and imposes no limitation on

the amount of this assistance. (Regulations implementing the URA also preclude a displacing agency from imposing a cap on the amount of a replacement housing payment.)

—The elimination of the requirement that recipients/grantees must provide relocation assistance in the form of security deposits and credit checks. Section 104(d)(2)(A)(iii) requires the provision of this type of assistance.

## II. Activities Subject to Section 104(d)

The interim rule provided that the one-for-one replacement of housing and relocation assistance requirements are triggered by a demolition or conversion that is a direct result of activities assisted under part 570.

The most frequently asked question was whether the section 104(d) requirements were triggered by CDBG-funded code enforcement activities. If CDBG funds are used to pay the actual cost of demolition or the cost of converting a low/moderate-income unit to a use other than for low/moderate-income housing, the one-for-one replacement of housing and relocation assistance requirements will be triggered. Such CDBG-funded activities may occur in connection with a local government's code enforcement activities.

However, where CDBG assistance is used solely to pay the administrative costs of code enforcement (such as payment of the salaries of code enforcement inspectors who condemn buildings), and the resulting demolition or rehabilitation is privately funded, the statute does not mandate coverage, since section 104(d)(2) requirements are limited to displacement "in connection with a development project assisted under section 106 or 119."

While coverage is not statutorily required, the Department is concerned that code enforcement activities have a substantial impact upon the housing supply available to persons of low/moderate income and may displace low/moderate-income households. Accordingly, HUD will publish a proposed rule asking for public comment on a proposal to extend administratively the requirements of this rule to require that relocation assistance be provided to low/moderate-income persons displaced by the demolition of housing or by the conversion of low/moderate-income dwelling units, and to require that low/moderate-income dwelling units converted to another use or demolished be replaced, if such demolition or conversion results from CDBG-assisted code enforcement activities.

Commenters also suggested that displacement could result from activities

that merely encourage the private renovation of low/moderate-income housing to luxury housing, offices, or retail uses (e.g., street and sidewalk improvements, sewer installation and repair, or the development or improvement of parks). Where CDBG-funded demolition of housing or conversion of a low/moderate-income dwelling unit occurs, a family displaced from the unit as a direct result of such CDBG-assisted demolition or conversion is covered by section 104(d). However, where CDBG-funded activities merely stimulate private renovation or demolition of other units, one-for-one housing replacement and relocation assistance are not required. Such indirect displacement is not covered by section 104(d).

One commenter believed that the eligible requirements are unworkable when applied to code enforcement situations. This commenter thought that the regulations required that relocation assistance must be provided to all tenants occupying the property on the date of the submission of an entitlement grant proposal and to all tenants who subsequently occupy the property.

As noted above, code enforcement activity is *not* covered under this rule. Moreover, as discussed below, tenants who are not provided a notice of eligibility for relocation assistance or given a notice to vacate the property (or otherwise misled) but elect to move before a contract covering the demolition or rehabilitation of the property is executed, are not eligible for assistance, even if such move takes place after submission of the grant proposal.

Some commenters noted that the antidisplacement and relocation plan requirements apply only in connection with an assisted "development project". Commenters argued that the interim rule would cover a number of assisted activities that clearly do not qualify as development projects. One commenter submitted legislative history in support of this position. Commenters argued that the "direct result" requirement should be modified to reflect more clearly the statutory language and the legislative history.

HUD's review of the legislative history of section 509 of the 1987 Act supports its position that the term "development project" is intended to cover activities receiving financial assistance under section 106 or section 119 of the Housing and Community Development Act of 1974.

## III. Definition of Low/Moderate-Income Dwelling Unit

Under the interim rule (1) demolished and converted low/moderate-income dwelling units must be replaced with low/moderate-income dwelling units that are designed to remain low/moderate-income dwelling units for 10 years from the date of initial occupancy; and (2) each low- or moderate-income household that is displaced by the demolition of housing or by the conversion of a low/moderate-income dwelling unit to another use must be provided with relocation assistance. The interim rule defined low/moderate-income dwelling unit as a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation under 24 CFR part 868.

Commenters suggested the use of various other standards for determining whether a dwelling unit is low/moderate-income. Suggested standards included dwelling units whose rent and utilities do not exceed 30 percent of 80 percent of the area median income; or 30 percent of 50 percent of area median income. Several commenters noted that replacement dwelling units must be designed to remain affordable to persons of low- and moderate-income for 10 years from the date of initial occupancy. They claimed that the definition of low/moderate-income dwelling unit is not a sufficient measure of affordability. To assure affordability, the commenters urged that a low/moderate-income dwelling unit be defined with reference to the income of the family occupying the unit (*i.e.*, a unit with a rent that does not exceed 30 percent of a low- or moderate-income family's income).

The final rule retains the interim rule's definition of low/moderate-income dwelling unit with one minor change discussed below. Based on a nationwide review comparing these FMRs with median incomes of families, the Department has determined that, in nearly every jurisdiction, the FMR for a unit housing a four-person household is less than 30 percent of the gross household income of a family earning 80 percent of the median income for the respective jurisdiction. In many areas a family with an income of 60 percent or 70 percent of the median income for the jurisdiction can pay the FMR with 30 percent of its gross income.

The Department recognizes that, generally, a very low-income family—a family earning less than 50 percent of the median income—cannot afford a

unit renting at the FMR level, unless the family is provided supplemental assistance. Therefore, the Department believes that housing vouchers and certificates under the Section 8 Existing Housing Program will remain an essential part of efforts to assist very low-income households. On the other hand, units with project-based subsidies, such as public housing and Section 8 assisted units, also will meet the criteria for the one-for-one replacement units under section 104(d) of the Act.

HUD notes that it is particularly inappropriate to define low/moderate-income dwelling unit by reference to the income of the household occupying the unit. Such a definition would unduly restrict the one-for-one replacement obligation, since the only units that would be subject to replacement would be units actually occupied by low- and moderate-income households. Dwelling units renting for less than the FMR that are occupied by households with incomes in excess of the moderate-income range would not be subject to replacement. Such a result would be contrary to the purpose of the one-for-one replacement provisions to maintain an adequate supply of housing available to low/moderate-income households. Finally, HUD notes that, under the commenters' proposed definition, it would be impossible to determine whether a demolished or converted unit would qualify as a low/moderate-income dwelling unit if the unit were unoccupied.

A review of the comments suggests that several commenters may have confused the two major components of the residential antidisplacement and relocation plan. Under one component, a recipient/grantee must maintain the supply of low/moderate-income dwelling units by providing for the one-for-one replacement of low/moderate-income dwelling units that have been demolished or converted. Under the other component, the needs of low- and moderate-income households that are displaced by the demolition of housing or conversion of low/moderate-income dwelling units are addressed by the provision of relocation assistance.

The confusion may arise from the commenters' mistaken belief that replacement units provided under the one-for-one replacement component are intended to be provided to households displaced from those units. The rule adequately provides for displaced households through relocation assistance requirements which mandate the provision of opportunities to relocate to comparable replacement housing.

("Comparable replacement housing" does not have to be the *same* housing as that provided under the one-for-one replacement requirement.)

A commenter asked whether low/moderate-income dwellings that are converted to transitional housing or emergency shelter use are subject to the one-for-one replacement and relocation assistance requirements. Emergency shelters and transitional housing for the homeless are not classified as permanent housing. Therefore, since such conversions result in a reduction of the available, permanent low/moderate-income housing supply, one-for-one replacement and section 104(d) relocation assistance are required.

Another commenter asked whether a tenant is considered to be displaced if the rent for a unit is increased, but the increased rent will not exceed the FMR. Such a case is not covered by section 104(d). However, if the increased rent/utility costs exceed 30 percent of the tenant's income and the tenant moves permanently, he or she will qualify as a displaced person eligible for assistance at URA levels (see § 570.496a(b)(2) or § 570.606(b)(2).)

The definition of low/moderate-income dwelling unit has been modified in the final rule to clarify an ambiguity. The interim rule defined low/moderate-income dwelling unit as a dwelling unit with a market rent (including utility costs) that does not exceed the FMR for existing housing and moderate rehabilitation under 24 CFR part 888. Under § 888.113(e), FMRs for the moderate rehabilitation program are set at 120 percent of the published FMRs for the Section 8 Existing program. HUD intended that the published FMRs be used for determining the status of a dwelling unit as a low/moderate-income dwelling unit. Accordingly, the final rule eliminates the reference to FMRs for the moderate rehabilitation program.

#### IV. One-for-One Replacement of Low/Moderate-Income Housing

The interim rule required the replacement of all occupied low/moderate-income dwelling units and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units.

*Occupied low/moderate-income dwelling unit.* The interim rule required the replacement of occupied low/moderate-income dwelling units, without regard to the condition of the unit. One commenter argued that units that are severely substandard (too dilapidated for economically feasible

rehabilitation) should not be subject to replacement.

While such housing may not generally be considered to be a part of a community's viable housing stock, the suggested revision cannot be made. Section 104(d)(2)(A)(i) provides for the replacement of all occupied low- and moderate-income dwelling units, without regard to the condition of the individual unit.

Commenters asked whether HUD would require the one-for-one replacement of owner-occupied low/moderate-income dwelling units. The statute requires the one-for-one replacement of low/moderate-income dwelling units that are demolished or converted to a use other than for low/moderate-income housing. The demolition of an owner-occupied unit with a market rent (determined by appraisal) that does not exceed the Fair Market Rent (FMR) reduces the supply of housing available to low/moderate-income persons. Accordingly, the rule continues to cover this class of housing.

The Department has determined, however, that owner-occupied units that are rehabilitated and remain owner-occupied after the rehabilitation do not have a negative impact on the supply of housing available to low/moderate-income persons; therefore, these units are not subject to the replacement housing requirement. The rule has been changed accordingly.

*Occupiable (But Vacant) Low/Moderate-Income Dwelling Unit.* The interim rule defined an occupiable dwelling unit as a dwelling unit in a standard condition, or in a substandard condition that is suitable for rehabilitation. Several commenters argued that substandard units that are suitable for rehabilitation should not be subject to the one-for-one replacement requirement. Commenters argued that this is an unnecessary regulatory expansion of section 104(d), and requires the replacement of units that, because of their substandard condition, are not available housing for low/moderate-income persons.

The purpose of the one-for-one replacement requirement is the maintenance of the housing stock available to low- and moderate-income persons. The demolition or conversion of substandard low/moderate-income dwelling units that are suitable for rehabilitation reduces the supply of housing available, irrespective of improvement, for use by low- and moderate-income persons. Such units represent a viable part of the housing supply available to low- and moderate-income persons and, in HUD's view, are

appropriately subject to the replacement requirements.

Under the interim rule, if a grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan are used in determining whether a unit is occupiable. If a grantee is not required to submit a HAP to HUD, the grantee must establish and make public its definition of these terms. (Under the State CDBG program, the State may define these terms or may permit a recipient to establish and make public these terms, subject to State approval.)

Some commenters argued that, for the purposes of the antidisplacement plan, grantees should be allowed to adopt definitions that differ from the applicable HAP definitions. HUD believes that the HAP definitions are appropriate for the purposes of section 104(d). An entitlement community's HAP is used as a basis upon which HUD approves or disapproves assisted housing in a grantee's jurisdiction and against which HUD monitors a grantee's provision of assisted housing. Moreover, a HAP should reflect a community's accurate survey of the condition of the housing stock in the community, including the grantee's assessment of the substandard housing units that it considers suitable for rehabilitation.

Section 570.306(e)(1) requires a grantee to develop a definition of substandard housing which, at a minimum, includes units which do not meet the housing quality standards of the Section 8 Housing Assistance Payments Program—Existing Housing (24 CFR part 882). This regulation permits each entitlement jurisdiction to establish its own definition of suitable for rehabilitation. One commenter argued that these regulations do not provide sufficient guidance concerning the definition of substandard, suitable for rehabilitation, and urged HUD to establish more specific guidelines.

The need to rehabilitate housing and, thus, determinations regarding suitability for rehabilitation, will vary greatly from community to community. The HAP provisions permit grantees to consider all factors affecting the suitability of housing for rehabilitation, including housing conditions prevailing in the jurisdiction, local housing and occupancy codes, climatic conditions affecting the suitability of housing, the housing attitudes of the community, and economic and other factors. HUD believes that for purposes of administering section 104(d), jurisdictions should be provided with equal discretion in analyzing the

condition of housing in their jurisdiction. The final rule is unchanged on this point.

One commenter suggested that the rule should not require the one-for-one replacement of occupiable units that have been vacant for more than a year before the commitment of funds to the project. HUD has not added this provision because it is not permissible under the Act. Moreover, occupiable low/moderate-income dwelling units constitute a part of the essential housing stock, no matter how long the units have remained vacant. Where such vacancies reflect an absence of demand for low/moderate-income dwelling units within a jurisdiction, the recipient/grantee may seek an exception from the one-for-one replacement requirement under §§ 570.496a(c)(1)(iii) and 570.606(c)(1)(iii). Under these provisions, replacement is not required when there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction.

One commenter asked how a grantee will determine whether a vacant occupiable dwelling is a low/moderate-income dwelling unit. As noted above, a dwelling unit is a low/moderate-income dwelling unit if the market rent (including utility costs) does not exceed the applicable FMR for Section 8 Existing Housing. The market rent of a vacant dwelling unit will be determined by appraisal.

Two commenters contended that the one-for-one replacement requirement of section 104(d) is triggered only in the event of displacement. These commenters argued that the replacement of dwelling units located in a vacant building is not required, since no displacement could be caused by the demolition or conversion. Other commenters argued that the requirement for the one-for-one replacement of dwelling units in vacant buildings is contrary to community efforts to reduce the dangerous physical and social conditions created by such buildings; would preclude the city and nonprofit organizations from rehabilitating vacant, uninhabitable structures under an existing local homestead program; and would have a negative impact on cities' efforts to provide assistance for the rehabilitation of vacant tax-foreclosed property.

The Department believes that its position is supported by a fair interpretation of the law. Section 104(d)(2)(A) does introduce the material which follows, which includes the requirement to replace "vacant occupiable units" with the words: "in the event of such displacement." Section

104(d)(2)(A)(i), however, goes on to require: "[R]eplacement dwelling for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted \* \* \*." [Emphasis supplied.] The Conference Committee Report resolves this apparent ambiguity by stressing that there is an obligation to replace vacant occupiable units subject to certain conditions, described elsewhere in this Preamble. The Department believes that the regulation as drafted carries out the intent of Congress. Moreover, the Department notes that the activities or programs identified by these commenters may still be carried out if no CDBG funds are used.

The preamble to the interim rule stated that one-for-one replacement of unoccupiable housing units is required if the units were vacated after preparations began for the CDBG program, or were vacated less than a year before the grant was approved. Several commenters argued that this language exceeded the requirements of section 104(d). A commenter argued that the requirement conflicts with a local ordinance which permits the demolition of vacant and hazardous units after a vacancy of only six months.

While the cited requirement reflects an apparent expansion of the statutory language, it is based on language in the Conference Committee Report. The report stated that the conferees did not intend to make vacant and unoccupiable housing subject to the one-for-one replacement requirement, unless the housing was vacated after the developer or city began preparations for the project or less than one year before the grant was approved. (H.R. Rep. 426, 100th Cong., 1st Sess. 228 (1987). This requirement is not contrary to the cited local ordinance which permits demolition of such units after six months. Rather, it merely subjects such demolitions to the one-for-one replacement requirements.

At the request of several commenters, HUD has included language in the text of the final rule to require the replacement of units occupied (except by a squatter) at any time within the period beginning one year before the date of execution of the agreement between the grantee (or in the State program, the state recipient) and the property owner for rehabilitation, or between the grantee (state recipient) and a contractor for demolition.

### V. Criteria for Replacement Units

Under the interim rule, replacement units must be:

—Provided within three years of the commencement of the demolition or rehabilitation related to the conversion;

—Located within the grantee's/recipient's jurisdiction;

—Sufficient in size and number to house at least the number of occupants who could have been housed in the units that are demolished or converted;

—Provided in standard condition; and

—Designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

#### Timing of replacement of units.

Commenters argued that there is no statutory basis for delaying the provision of replacement units and, even if a delay were permissible, that three years is too long. Commenters argued that projects causing the loss of affordable units should not be approved until there is property and money for replacement units, and that the replacement units must be available for occupancy when dwelling units are demolished or converted. One commenter suggested that a delay should be permitted only where the replacement housing is located on the same site as the demolished or converted housing.

The regulation recognizes that it is not always practicable to have replacement units available on the date that the demolition or rehabilitation related to the conversion occurs, and permits a grantee/recipient a reasonable time to provide the replacement units. Based on the length of time that it may take to develop replacement housing, HUD believes that three years is not an excessive period. Residents who are displaced by the demolition or conversion would not be disadvantaged by this provision, since they must be provided with comparable (affordable) replacement housing before displacement. (See relocation assistance requirements described below.)

Several commenters argued that dwelling units provided before the commencement of the demolition or rehabilitation should count as replacement housing. (The interim rule did not preclude this.) The final rule has been revised to permit the consideration of replacement dwelling units that are made available for occupancy at any time during the period beginning one year before the grantee's submission of the information required under §§ 570.496a(c)(1)(ii) and 570.606(c)(1)(ii) and ending three years after the commencement of demolition or rehabilitation related to the conversion.

Replacement dwelling units that are made available for occupancy before the submission of this information will be considered in determining whether an exception may be provided under §§ 570.492a(c)(1)(iii) and 570.606(c)(1)(iii). Under these exception provisions, the one-for-one replacement is not required if HUD determines that there is an adequate supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis within the grantee's jurisdiction.

The final rule clarifies that replacement units are "provided" when the units are made available for occupancy.

*Location of replacement units.* Section 104(d)(2)(i) requires replacement units to be located within the same community. The interim rule interpreted this provision to require the replacement dwelling units to be located within the grantee's/recipient's jurisdiction. A related provision, section 104(d)(3), permits HUD to relieve grantees/recipients of the one-for-one replacement requirement if there is available in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. The interim rule stated that HUD would consider the supply of housing located within the jurisdiction for the purposes of the exception. (The exception is fully discussed below.)

Some commenters argued that HUD should interpret "community" and "area" more restrictively. These commenters argued that the interim rule would have the effect of pushing low/moderate-income people away from their neighborhoods and would isolate them from families, friends, ethnic and racial support, schools, jobs, and access to transportation. Commenters argued that the interim rule permits gentrification and could be used to create separate low-income ghettos. Commenters would define "community" and "area" as the same neighborhood or an adjacent neighborhood, or adjacent census tracts with social and economic ties to the census tract in which the demolished or converted dwelling units are located. One commenter argued that the regulations should require that a substantial portion of the replacement units be located in such neighborhoods or census tracts.

The Conference Report accompanying the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) clarified the intent of the antidisplacement provisions by stating:

The intent of the antidisplacement provision is that a locality would be required to replace lost low-income housing units with decent, safe and sanitary units that are affordable to low- and moderate-income tenants for 10 years, unless the Secretary finds that there is available in the area an adequate supply of habitable affordable housing for low- and moderate-income persons \* \* \*

The term "area" in this section would mean the area within the political boundaries of the grantee unless the Secretary finds that such boundaries are inappropriate in the case of a project located near the boundary of a community. [Emphasis added]

H.R. Rep. No. 1089, 100th Cong., 2d Sess. 106-07 (1988).

This discussion, on its face, applies only to the exception contained in section 104(d)(3). However, if housing throughout the jurisdiction is to be taken into account in determining whether to apply an exception, it is appropriate to consider the replacement units made available in the jurisdiction for the purposes of the one-for-one replacement requirement as well.

The restrictive reading suggested by commenters also may be in conflict with several statutory provisions governing the CDBG programs, including:

—Section 101(c)(6) of the Act, which states that the objective of block grant assistance is the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income.

—Section 104(c)(1)(C)(ii) which addresses HAPs and provides that the general location of proposed housing for persons of low- and moderate-income should serve to promote greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of persons of low- and moderate-income.

—Other Federal statutes that prevent construction or rehabilitation of housing in areas affected by hazardous wastes, soil subsidence, flooding or proximity to airports, or to sources of pollution discharged into the air or into waters or aquifers. In some cases, these conditions may have contributed to the demolition or conversion of the housing for which the replacement units are mandated.

HUD recognizes commenters' concerns that opportunities be provided for low- and moderate-income persons to remain in the neighborhoods from which they are displaced. Thus, HUD's rules governing relocation assistance to displaced families and individuals

require, to the extent feasible, that comparable replacement dwellings must be selected from the neighborhood in which the dwelling was located. Where this is not feasible, comparable replacement dwellings must be selected from nearby or similar neighborhoods where housing costs are generally the same or higher. (Also, see 49 CFR 24.403(a)(3)) (URA rules).

With respect to the location of one-for-one replacement housing, the final rule has been revised to state that, to the extent feasible and consistent with other statutory authorities, replacement housing shall be located within the same neighborhood. In rural areas, however, it is recognized that the term "neighborhood" may not have the meaning it has in urban areas. In many rural areas the only relevant term may be "jurisdiction."

Other commenters noted that housing and neighborhood patterns may not always coincide neatly with jurisdictional boundaries. The commenters would permit grantees/recipients to consider replacement units and housing options that are available across jurisdictional boundaries. For the reasons stated above, HUD believes that the recipient/grantee jurisdiction is the appropriate area considered under sections 104 (d)(2)(i) and (d)(3). HUD notes, however, that the supply of vacant low/moderate-income dwelling units located in an area that is larger than the grantee's jurisdiction may be considered under the exception provisions under certain circumstances.

*Number and size of replacement units.* Replacement units must be sufficient in number and size to house at least the number of occupants who could have been housed in the units that are demolished or converted.

The interim rule provided that the number of occupants who could have been housed in demolished or converted units is determined by reference to local housing occupancy codes. Several commenters objected to this provision. Commenters argued that the number and size of the replacement units must be adequate to accommodate the people who have actually resided in the replaced units. (Commenters suggested that the determination of the number of people who could have been housed in vacant units should be based upon the number of people per bedroom living in comparable units in the neighborhood, or the average for the community based upon the square footage of the units.)

The purpose of the replacement housing requirements of section 104(d) is to ensure that activities sponsored under the CDBG program will not result in a diminution of the existing housing

supply. The needs of the persons displaced from the demolished or converted dwelling units are addressed by the relocation assistance requirements, which provide that displaced families must be offered comparable replacement housing suitable in size to accommodate all of the occupants of the demolished or converted low/moderate-income dwelling unit. Thus, if two families occupy a single unit in violation of a local building code occupancy standard and that unit is demolished, each family may be provided with assistance necessary for relocation to separate comparable replacement dwelling units.

Several commenters thought that the interim rule required the replacement of a single family dwelling with a single family dwelling, a one-bedroom unit with another one-bedroom unit, etc. To serve more efficiently the needs of the community, the commenters argued that the final rule should give the local community the option of combining two or more smaller units to produce one large unit of housing.

Subject to the requirement that the total number of replacement units must be sufficient in number and size to house at least the number of occupants who could have been housed in the demolished or converted units, the interim rule provided a grantee/recipient with broad discretion in determining the size and type of replacement dwelling units to be provided. For example, a four-bedroom unit could be replaced with 2 two-bedroom units. The final rule has imposed an additional restraint on this local discretion.

In most areas, there is a need to maintain or to increase the supply of large family units. To ensure that the need for such family units will be considered, the final rule prohibits the replacement of dwelling units with units having fewer bedrooms, unless the grantee/recipient makes public, and submits information demonstrating, that the proposed replacement is consistent with the housing needs of low- and moderate-income households in the jurisdiction. This submission must be made before the grantee enters into a contract committing it to provide funds (see §§ 570.496a(c)(1)(ii)(G) and 570.806(c)(1)(ii)(G)). The final rule requires grantees to provide information demonstrating that replacement with smaller units (e.g., replacing a 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the applicable HUD-approved HAP. If there is no applicable HAP, the grantee must submit information demonstrating that the

replacement with smaller units is consistent with the housing needs of low/moderate-income households in the jurisdiction.

Several commenters cited factors that would mitigate against the one-for-one replacement of low/moderate-income dwelling units (e.g., displacees leaving the jurisdiction, reduction in unemployment rates, etc.). The commenters would permit the grantee to reduce the number of replacement units provided based on these factors. The cited factors are among those that may be considered in the review of exception requests (see discussion below).

*Replacement of housing through rehabilitation.* To allow communities to realize substantial economies through rehabilitation (instead of undertaking new construction), and to encourage communities to maintain their available standard housing stock through rehabilitation of substandard units, the interim rule stated that replacement units must be provided in standard condition and may include dwelling units raised from substandard to standard. This, however, raised a concern that CDBG-assisted activities could result in a diminution of the supply of low/moderate-income housing if grantees/recipients chose to replace demolished or converted units by rehabilitating occupied units. To preclude this result, the final rule has been revised to limit one-for-one replacement through rehabilitation to those units (1) that have been vacant for at least three months before execution of the agreement between the grantee/recipient and the property owner and (2) from which no person has been displaced as a direct result of an assisted activity.

*Affordability.* The interim rule provided that replacement units must be designed to remain low/moderate-income dwelling units for ten years from the date of initial occupancy. The rule also stated that replacement low/moderate-income dwelling units may include public housing, or assisted housing receiving project-based assistance under Section 8 of the United States Housing Act of 1937.

Several commenters argued that the cost of ensuring affordability for ten years would impose an enormous burden on grantees/recipients and would require them to anticipate the effects of inflation and other market fluctuations for an undue period of time. Commenters were also concerned that HUD would require a grantee/recipient to continue to monitor replacement units to ensure that they remain low/

moderate-income dwelling units for ten years.

The statute and the final rule require that units must be "designed" to remain affordable, *i.e.*, as low/moderate-income dwelling units, for a ten-year period. Grantees/recipients are not required to guarantee that the units will continue to be available for this time period. The determination is made at the time that the replacement units are provided. Thus, if there is no foreseeable change in the character of the neighborhood in which a replacement unit is located, a grantee/recipient would be justified in assuming that the replacement low/moderate-income dwelling unit will continue to be available at a rent that does not exceed the FMR under the Section 8 Existing Housing program.

Since the determination whether a replacement unit is designed to remain a low/moderate-income unit for ten years is made when the unit is provided, HUD does not intend to require the grantee/recipient to incur unnecessary administrative costs of monitoring every replacement unit. Replacement housing responsibilities, however, will be monitored in connection with annual performance reviews and reports. And to evaluate the effectiveness of these provisions, HUD may also perform spot checks of a representative sample of replacement units.

Other commenters noted that the initial allotment of contract authority for various HUD subsidy programs (e.g., the Section 8 project-based assistance) may limit the provision of assistance to families to specified periods of time that are less than 10 years. These commenters asked whether such units would qualify as housing that will be designed to continue to be low/moderate-income dwelling units.

The Department encourages grantees/recipients to focus their replacement housing efforts on units where the market rent does not exceed the FMR and no significant change in neighborhood character is expected in the foreseeable future (*i.e.*, the increase in market rental values is not likely to exceed the increase in FMR's.) In such cases, the occupant of the unit should not face displacement from substantial future rent increases during or after the 10-year period.

Dwelling units in project-based Section 8 subsidy programs, including the Section 8 Moderate Rehabilitation Programs, may have a market rent that exceeds the FMR. The project-based subsidy makes the unit affordable, reducing the rent to 30 percent of the household's adjusted income. A unit for which a project-based subsidy is

provided may qualify as low/moderate-income dwelling.

However, the initial term of the housing assistance payments contract between the Public Housing Authority (PHA) and the property owner under the Section 8 project-based assistance program can not exceed five years. Also, the term of the Section 8 assistance available to a PHA for conversion to a project-based subsidy program may be limited by the annual contributions contract (ACC) between HUD and the PHA to a term of less than five years.

To meet the 10-year low/moderate-income requirement, therefore, the PHA must enter into a contract with the property owner which guarantees that, subject to the availability of funds, the initial HAP contract will be renewed as necessary to ensure that the aggregate term of the initial contract and renewal is at least ten years. In such cases, grantees may assume, for section 104(d) purposes, that funding levels will continue to permit the renewal of the assistance for additional terms and that, absent other circumstances, such units will meet the requirement that replacement units be designed to remain low/moderate-income dwelling units for the requisite time period.

Some commenters argued that the replacement housing requirements should permit inclusion of low/moderate-income dwelling units provided under State-sponsored subsidy programs or provided by private sources as replacement housing. Another commenter argued that nothing in the legislative history of the statute suggests that public housing constitutes acceptable replacement units and suggested that public housing should be stricken from the list of acceptable replacement housing. Another commenter objected to the provision that replacement low/moderate-income dwelling units may include existing housing receiving project-based assistance under section 8 of the United States Housing Act of 1937. This commenter would limit subsidized replacement housing to new or substantially rehabilitated units, since anything less would lead to a net loss of affordable housing.

The language in the interim rule reflects section 104(d)(2)(A)(i) of the Act, and was intended to clarify that units with project-based subsidies, including those with section 8 existing assistance attached to a rehabilitated project, would qualify as replacement housing (H.R. Rep. 426, 100th Cong., 1st Sess. 227 (1987)). (Low/moderate-income dwelling units provided under the Section 8 New Construction or Substantial Rehabilitation program may also qualify

as replacement dwelling units. However, since Congress has terminated these two programs, the only new additions under these programs are units currently in the pipeline.)

The purpose of the one-for-one replacement requirement is the maintenance of the housing supply. HUD believes that all known methods that provide low/moderate-income units should be considered in determining the number of replacement units provided, even if the specific subsidy mechanism is not named in the statute or in the legislative history. As long as a unit meets the replacement housing requirements cited in the rule (*i.e.*, the unit meets the definition of low/moderate-income dwelling unit, is provided within three years of the commencement of the demolition or rehabilitation related to the conversion, is located within the grantee's/recipient's jurisdiction, is provided in sufficient number and size, is in standard condition, and is designed to remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy), the funding source of the replacement unit (whether through Federal or local subsidy programs, or through private developers) is irrelevant.

One commenter agreed, noting that the important factor is the increase in the housing supply, not who provides the replacement housing. The language of the final rule continues to permit all known additions to the housing stock to be considered as replacement housing.

One commenter requested clarification with respect to whether replacement units must be of a "like kind" (*i.e.*, low-income units replaced with low-income units, and moderate-income units replaced with moderate-income units). The final rule does not distinguish between low-income dwelling units and moderate-income dwelling units.

*Requirements for submission to HUD and public disclosure.* The interim rule required grantees/recipients to make certain information public before obligating or expending funds for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use. The information must also be submitted to HUD or to the State, in the case of a recipient under the States program. The information submitted is not subject to approval by HUD or the State prior to the obligation or expenditure of funds.

Several commenters argued that this provision exceeds the requirements of section 104(d); is administratively

onerous; is unnecessary in light of the certification requirements; and would substantially delay CDBG activity.

The interim rule requires grantees/recipients to fulfill the submission and disclosure requirements before obligating or expending funds under part 570. One commenter stated that this would require the submission of information when the city executes the entitlement grant agreement, since this would be the time that the city would "obligate" its CDBG funds for its ongoing code enforcement program. The commenter claimed that there is no way that the city could predict or identify in advance which structures would be demolished during an upcoming grant year.

One commenter argued that the information requirements are unreasonable if disclosure is required prior to the obligation of funds. One commenter suggested that the data should be required at a date closer to the three-year deadline for the provision of replacement units. Another commenter suggested that HUD require grantees to file an annual report containing this information following the conclusion of each grant year rather than require disclosure before the obligation of funds.

The public disclosure and submission to HUD or the State of the described information will ensure that the public is aware of the recipient's plan for demolition and conversion and will assist HUD and the State in the monitoring of grantee/recipient compliance with the requirements of section 104(d). The benefits of disclosure should, thus, outweigh the limited administrative obligations imposed on the grantee/recipient. Any delay in the commencement of CDBG activities caused by compliance with the cited requirements should be negligible.

As a further point of clarification, as used in the interim rule, the "obligation" of funds refers to the grantee's entering into a contract committing it to provide funds for an activity (e.g., a rehabilitation agreement with a property owner) that will directly result in the demolition of housing or conversion of low/moderate-income dwelling units.

With respect to the suggestion that grantees file an annual report, HUD may amend the Grantee Performance Report (GPR) to require that grantees include data demonstrating compliance with section 104(d) provisions.

Under the interim rule, the grantee/recipient was required, in part, to identify the general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use

other than low/moderate-income housing as a direct result of the assisted activity. Grantees/recipients were required to provide the same type of information for the replacement dwelling units. Commenters argued that grantees/recipients should be required to disclose the exact address and the actual number and size of the demolished, converted and replacement dwelling units.

The purpose of the submission and public disclosure requirements is to ensure that HUD and the public are notified of the grantee's/recipient's plan for the demolition and conversion of low/moderate-income housing and for the replacement of such housing before the obligation and expenditure of funds for the planned activities. Since recipients/grantees will know the exact address and actual number and size of the low/moderate-income dwelling units that will be demolished or converted to other uses before funds are obligated for the conversion or demolition, the final rule has been revised to require the submission and publication of this information.

Under the final rule, replacement housing may be provided up to three years following the commencement of the demolition or conversion. It is possible that the precise location and number of dwelling units to be provided may not be determined before the obligation and expenditure of funds. Accordingly, the final rule will require information on the exact location and number of replacement dwelling units only to the extent that such information is available at the time of the submission and the publication. Information that is not available at the time of submission and publication must be publicly disclosed and submitted to HUD as soon as it becomes available.

Other commenters suggested that grantees/recipients should be required to provide information on the number of persons living in the units to be demolished or converted. This information is necessary to ensure that occupants receive proper relocation assistance. Notice CPD 89-42 issued by the Department in September 1989 addresses the need to maintain such information.

#### *VI. Exception From the One-For-One Replacement Requirement*

The interim rule permits HUD to grant requests for an exception from the one-for-one replacement requirement under certain circumstances (see §§ 570.496(c)(1)(iii) and 570.606(c)(1)(iii)).

*Criteria for exception.* One commenter argued that the interim rule

did not include a standard for granting or denying the exception. This commenter suggested that HUD should consult with the local CDBG officials before setting a specific standard. The interim rule included a standard for granting and denying exception requests, *i.e.*, an exception is granted only if HUD determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. The final rule further clarifies this standard. The final rule provides that, in determining the adequacy of the supply, HUD will consider whether the proposed demolition or conversion of the low/moderate-income dwelling units will have a material impact on the ability of low/moderate-income persons to find suitable housing.

One commenter argued that HUD should make its determinations regarding the adequacy of the supply of housing without regard to the condition of the available housing. This comment has not been incorporated into the final rule. The statute directs HUD to make a determination concerning the adequacy of the supply of habitable affordable housing for low- and moderate-income persons.

The interim rule cited three factors considered in the review of exception requests: the housing vacancy rate for the jurisdiction; the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted); and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction. The preamble to the interim rule encouraged public comment on other factors relevant to this determination.

Commenters suggested the consideration of the following additional factors: (1) The number of homeless in the area; (2) the number of low/moderate-income dwelling units that will be lost within the next three years because of mortgage prepayments; (3) the amount of replacement housing constructed in prior years; (4) the need figures from the HAP; (5) the availability of ownership units; (6) any past or projected population decreases; (7) the recent rejection by HUD of a grantee's grant application based on a determination that the grantee does not have a housing shortage; (8) a lack of evidence that recent demolitions have significantly affected rent rates or sales prices; (9) low rental rates or low sales prices (compared nationally or within

the grantee's State, at the locality's option); (10) a low ratio of housing expense to monthly income when compared on a national bases; (11) a high rate of homeownership; (12) flat or declining rental rates and/or sales price trends; (13) a high number of vacant housing structures; and (14) other economic or population trends.

HUD did not intend to limit its consideration to the three factors cited in the rule. The illustrative list of factors considered has been revised to include other factors that are of general applicability, *i.e.*, relevant past or predicted demographic changes and, for § 570.606, need figures from the HAP, and information contained in the Comprehensive Homeless Assistance Program (CHAP). Consideration of the HAP figures is appropriate since the HAP forms the basis for all funding and planning decisions, provides assessments of the numbers of units of all types and conditions, and requires an assessment of the regional needs for housing for all sectors of low-income residents. As revised, the final rule now makes clear that HUD will consider all relevant evidence of housing supply and demand made available to HUD.

Commenters submitted the following comments on the three factors included in the interim regulation:

1.—*Overall housing vacancy rates.* Commenters argued that the final rule should provide that jurisdictions with an overall vacancy rate in excess of a stated percentage are exempt from the one-for-one replacement requirement. Overall vacancy rates are good indicators of the availability of housing in an area and will continue to be cited as a factor that is considered in determining the adequacy of the supply of vacant low/moderate-income housing. Overall vacancy rates, however, reflect the availability of *all* housing in an area. They may understate the availability of low/moderate-income dwelling units and do not reflect the condition of the available units. While the final rule continues to list the housing vacancy rate as a factor to be considered in reviewing exception requests, it does not adopt the provision urged on the Department by the commenters.

2.—*Low/moderate income housing vacancy rate.* Some commenters noted specifically that the relevant inquiry under the exception is the adequacy of the supply of low/moderate-income dwelling units in standard condition. The commenters urged HUD to consider only vacancy rates for such units. Data will not always be available on the condition and rental rates of all vacant units within a jurisdiction. Accordingly,

under some circumstances, the grantee's/recipient's request for exception may be based on general vacancy rate data, if such data are augmented by additional evidence permitting conclusions about the availability of low/moderate-income housing.

Other commenters urged HUD to specify the sources of information that may be used to establish the vacancy rate (e.g., Census or other survey data). HUD does not wish to limit its consideration to any specific sources of information. As long as the grantee/recipient demonstrates that the information is a relevant measure of the supply and demand for low/moderate-income dwelling units, HUD will consider the data. HUD will determine the weight to be accorded the submitted information.

3.—*Waiting lists.* Several commenters argued that waiting lists are not a consistent, reliable, and objective measure of housing need because the length of a waiting list may be influenced by PHAs' outreach efforts; lists may overstate need if they are not updated frequently or if names are duplicated; and lists only reflect housing applicants' interest at the time of inquiry. In addition, waiting lists largely may reflect the applicants' needs for income subsidies and may be lengthy, even if low/moderate-income dwelling units are available.

HUD agrees that waiting lists may not always be an accurate indicator of the availability of low/moderate-income dwelling units. However, the use of waiting lists reflects language from the Conference Report accompanying the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988): "The exception determination shall be based upon objective information that shall include . . . the number of eligible families on the waiting lists for public housing or housing assisted under Section 8." Accordingly, the final rule retains this factor.

*Appeals.* The interim rule stated that the HUD Field Office will make all exception decisions. Commenters suggested that HUD provide an appeals procedure. The Department declines to do so, because its experience indicates that these matters have been addressed adequately at the Field Office level.

Relevant language from the Conference Report states that "In making this determination [regarding exceptions], the Secretary should provide an opportunity for interested parties, including organizations representing tenants, non-profit

organizations and others, to provide information which the Secretary should consider in making this determination." The final rule has been revised to provide this opportunity. Under the final rule, simultaneously with the submission of the request for an exception, the grantee must make the submission public and inform interested persons that they have 30 days from the date of the submission to provide to the HUD Field Office additional information supporting or opposing the request.

#### VII. Relocation Assistance Under Section 104(d)—General Provisions

Each low- or moderate-income household that is displaced as a direct result of the demolition of any dwelling or by the conversion of a low/moderate-income dwelling unit to another use in connection with an activity assisted under part 570 must be provided with replacement housing assistance. Displaced households may elect to receive relocation assistance described under 49 CFR part 24 (the government-wide regulation implementing the URA) or section 104(d) relocation assistance.

One commenter recommended that HUD, to the extent permitted under the statute, should make the final rule consistent with applicable URA provisions. Where possible, the final rule makes relocation assistance provided under section 104(d) of the Act identical to the relocation benefits under the URA. Specifically, the rule provides the following benefits under section 104(d):

1. Advisory services at the same levels as provided under 49 CFR part 24, subpart C (General Relocation Requirements).

2. Payment for moving and related expenses at the same levels as provided under 49 CFR part 24, subpart D (Payment for Moving and Related Expenses).

3. Security deposits and credit checks. The grantee must pay the reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and of credit checks required to rent or purchase the replacement dwelling unit. (A commenter asked who would receive a security deposit refund at the end of the household's tenancy. The tenant on whose behalf the security deposit was paid would receive the security deposit refund at the end of the tenancy.)

4. Interim living costs. Section 104(d) and URA relocation policies prohibit the displacement of a person from his or her dwelling, unless the displacing agency has referred the person to at least one comparable (affordable) replacement

dwelling. The only exception to this policy is an emergency move that results because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the occupants or public. The final rule continues the current policy that requires the displacing agency to pay all out-of-pocket costs (*i.e.*, interim living costs) incurred in connection with a temporary relocation caused by such an emergency.

In response to public comments, the final rule contains a new requirement addressing those circumstances where a person is ordered to vacate a low/moderate-income dwelling unit and none of the comparable replacement dwelling units to which the person has been referred qualifies as a "low/moderate-income dwelling unit." (A comparable replacement dwelling will be affordable to a person for the period covered by the rental assistance payment. The market rent of the unit may, however, exceed the FMR.) In such cases, the grantee/recipient must, upon request, pay the reasonable temporary relocation costs incurred by the person if a suitable low/moderate-income dwelling unit is scheduled to become available under the one-for-one replacement unit provisions of § 570.496a(c)(1) or § 570.606(c)(1).

5. Replacement housing assistance (See discussion below.)

#### VIII. Replacement Housing Assistance

The interim rule provides that each displaced person must be offered rental assistance equal to 60 times the amount necessary to reduce the estimated average monthly cost of rent and utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to 30% of the person's income. A person may elect, however, to purchase an interest in a housing cooperative or mutual housing association and obtain a lump sum payment based on the capitalized value of such assistance.

*Adjustments to Income.* Under the interim rule, rental assistance payments are based on the amount needed to reduce rent/utility costs to 30% of the household's monthly gross income, after making such adjustments to income "as the grantee may deem appropriate." Commenters objected to this provision, arguing that either the adjustments to income must reflect Section 8 procedures, or the provision should be deleted.

The final rule provides for adjustments to income in accordance with the Section 8 program. Specifically,

the replacement housing assistance must be sufficient to reduce the person's rent/utility costs to the "total tenant payment" described in § 813.107. Under § 813.107, the tenant must pay the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly gross income; or

(c) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is so designated.

*Section 8 Vouchers or Certificates as Replacement Housing Assistance for Displaced Persons.* While the statute does not specifically address the use of Section 8 vouchers or certificates to provide replacement housing assistance, the interim rule permits a grantee/recipient, under certain circumstances, to meet all or a portion of its replacement housing payment obligations by providing a Section 8 certificate or voucher to the displaced person. This form of assistance (in some cases it must be supplemented by cash assistance) usually reduces the cost of rental housing to the level required by the regulations. Generally, Section 8 assistance is more advantageous to the displaced person because assistance may be provided for more than a 5-year period and may be adjusted periodically to reflect changes in rental costs or family income.

One commenter argued that the law does not authorize the use of Section 8 vouchers or certificates as a means to compensate displaced persons and that the provision of vouchers and certificates violates the spirit and intent of the Act because it does not require the grantee/recipient to internalize the cost of displacement and, therefore, does not act as a deterrent to displacement. The commenter also observed that the provision of vouchers and certificates does not create new replacement housing and will place nondisplaced low-income persons further down on waiting lists for affordable housing.

Vouchers and certificates may meet the statutory requirement of ensuring that displaced households do not pay more than 30 percent of their income for shelter costs. Also, they are often the most advantageous relocation resource that can be made available to the displaced person because they may

ensure long-term assistance. The final rule does not change the policy governing the use of Section 8 vouchers or certificates.

*Grantee/Recipient Discretion.* One commenter did not fully understand the discretion provided the grantee or state recipient with respect to the selection of the type of replacement housing assistance to be provided when the displaced person elects to rent a replacement unit, rather than buy an interest in a housing cooperative or mutual housing association.

Whenever a displaced low/moderate-income person decides to rent a replacement dwelling, the grantee/recipient has the discretion to provide all or a portion of this assistance through a certificate or housing voucher for rental assistance provided through the Local Public Agency (PHA) under Section 8 of the United States Housing Act of 1937. Whenever the grantee/recipient chooses this option, however, it must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program.

Assuming the grantee/recipient has provided appropriate referrals and the displaced person elects to rent a replacement unit, the displaced person does not have the right to insist that the section 104(d) rental assistance be provided in cash payments directly to the displaced person. (Of course, the displaced person could elect to obtain direct cash payments under the URA which provides such option to the displaced person, rather than to the grantee/recipient).

This decision to offer cash rental assistance in installments rather than in a lump sum, is wholly within the discretion of the grantee or the state recipient. However, whenever the household purchases an interest in a housing cooperative or mutual housing association, the household must be provided a lump sum cash payment based on the capitalized value of the assistance needed to rent a comparable replacement dwelling unit.

*Referrals to Replacement Housing.* If a Section 8 certificate or voucher is provided, the household must be given referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. One commenter would not require these referrals. The commenter argued that displaced households should not be treated differently from other households under the Section 8 program. HUD does not agree that the provision of a voucher or certificate without referrals is sufficient

to satisfy the statute. Accordingly, the final rule is unchanged on this point.

*Eligibility for Replacement Housing Assistance Under Section 104(d) and the URA.* One commenter believed that the URA does not require the provision of replacement housing assistance to a tenant who moves into a property after the "initiation of negotiations" for the activity. The commenter stated that such tenants must be provided with replacement housing payments under section 104(d) but that the URA payments would be limited to moving payments and advisory services.

The commenter apparently misunderstood the URA requirements. Under the URA, a tenant who moves into a property after the "initiation of negotiations" and is subsequently displaced by rehabilitation, demolition, or acquisition for the assisted activity may qualify for replacement housing assistance. This policy reflects section 205(c)(3) of the URA, which prohibits the displacement of any occupant of a dwelling, unless the occupant is offered the opportunity to relocate to a comparable (affordable) replacement dwelling.

Under the government-wide URA rule, a person who moves into a dwelling after the "initiation of negotiations" (or less than 90 days before the initiation of negotiations) but is later displaced by the project must be provided replacement housing assistance equal to 42 times the amount necessary to reduce the monthly rent/utility costs for a replacement dwelling to 30 percent of the person's gross household income. The provision of this assistance is required to comply with section 205(c)(3) and is authorized under section 206 (last resort housing) of the URA. See 49 CFR 24.2(d)(8)(iii) and 49 CFR 24.404(c)(3). (The formula for computing this assistance differs from that for computing a replacement housing payment under section 204 of the URA. Section 204 payments are required when the person occupied the property for at least 90 days immediately before the initiation of negotiations.)

*Redetermination of Income and Reinspection of Housing.* Several commenters indicated that the cash rental assistance provision is administratively unmanageable. These commenters assumed that the cash rental assistance computation must be adjusted to reflect changes in the household's rental costs and income after displacement. For example, one commenter asked how often the agency will be required to check the displaced person's income status and rent.

The amount of cash rental assistance to be provided is based on a one-time

calculation. The payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or family size.

*Lump Sum Payment to Purchase Replacement Housing.* If a displaced person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the person is entitled to receive a lump sum payment. A commenter suggested that HUD should amend the rule to provide a lump sum payment to permit the displaced person to purchase any type of housing.

The rule continues to reflect the statutory language requiring the grantee/recipient to provide lump-sum purchase assistance payment only for participation in a housing cooperative or a mutual housing association. A displaced person who buys a replacement dwelling that is not part of a cooperative or mutual housing association is eligible for purchase assistance under the URA.

*Tax Status of Payments.* In accordance with 42 U.S.C. 4636, payments under the URA are tax exempt. A commenter suggested that HUD's regulation should address the tax liability associated with section 104(d) payments to displaced persons. HUD has requested the Internal Revenue Service (IRS) to rule on whether such payments are includible in a displaced person's income for tax purposes and will notify grantees/recipients of the IRS determination.

#### IX. Definition of Displaced Person

For purposes of the section 104(d) requirements, the term "displaced person" means any low/moderate-income family or individual that moves from real property, permanently and involuntarily, as a direct result of the conversion of a low/moderate-income dwelling unit another use, or the demolition of any housing unit in connection with an assisted activity.

In defining this term, the final rule clarifies the circumstances under which a permanent move is considered to be an involuntary move undertaken "in connection with the assisted activity," thereby making the person eligible for relocation assistance as a "displaced person" (§§ 570.496(c)(3)(ii) and 570.606(c)(3)(ii)). As nearly as possible, the definition of a "displaced person" for section 104(d) purposes conforms to the definition of a "displaced person" for purposes of providing URA levels of assistance (§§ 570.496a(c)(3)(ii) and 570.606(b)(2)(i)).

The term "displaced person" includes a person who moves permanently from

the real property following a written notice to vacate the premises that is issued (1) by the grantee/recipient after its request to HUD for the financial assistance, or (2) by the property owner (or person in control of the site) after such person submits a request for the financial assistance from the grantee/recipient. The term "displaced person" also includes a tenant who moves permanently, with or without any notice, after the execution of an agreement under which the grantee/recipient provides assistance for rehabilitation to the person owning or controlling the property, if the tenant has been offered the right to lease and occupy a suitable, affordable, decent, safe and sanitary unit in the property or is not offered reimbursement for associated out-of-pocket costs (i.e., temporary relocation or move within the site).

*Displacement Before Application for Assistance.* Several commenters noted that households are often required to move before an owner applies for a subsidy. These commenters argued that the regulations should provide relocation compensation if people are forced to move within 360 days before the property owner applies for a subsidy.

The final rule does not contain the specific provision urged on the Department by this commenter. However, the final rule ensures that any such household will be eligible for relocation assistance as a displaced person "if either HUD or the grantee/recipient determines that the displacement directly resulted from the conversion of a low- or moderate-income dwelling unit or demolition in connection with the requested activity." See §§ 570.496a(c)(3)(ii)(A)(2) or 570.606(c)(3)(ii)(A)(2).

*Eligibility of Succeeding Tenants.* One commenter feared that there will be multiple turnovers in dwelling units within the time period required to process applications. The commenter argued that (1) keeping track of tenant movements and providing notice to new tenants creates an additional administrative burden that may landlords may overlook; and (2) more than one person displaced from a unit may qualify for a replacement payment. This commenter supported a length-of-tenancy requirement.

The statute does not permit HUD to establish a length-of-tenancy requirement. Implementation of the rule does require certain administrative actions and recordkeeping necessary to demonstrate compliance with the rule. It should be noted, however, that informed tenants who move from the property

voluntarily (*i.e.*, they are given notice of the property owner's application and are not ordered to vacate the property) before execution of the agreement between the property owner and the grantee/recipient do not qualify for relocation assistance under the rule. Also, a tenant moving into the property after the owner submits the request for financial assistance does not qualify for assistance if the tenant is given notice of the expected displacement before the tenancy commences.

For these reasons, HUD does not believe that implementation of the rule should result in multiple displacements from the same unit.

*Displacement From Unit That Remains Low/moderate-income.* One commenter asked whether section 104(d) would apply if a very low-income tenant is displaced because his unit is rehabilitated and the post rehabilitation rent exceeds 30 percent of the tenant's income, but the unit remains a low/moderate-income dwelling.

Section 104(d) does not apply in this circumstance because the unit has not been "converted" to a non-low/moderate-income use. However, such person would qualify as a displaced person who is eligible for assistance at URA levels if his or her rent/utility cost increased and the new cost exceeded 30% of the person's gross income.

*Eviction for Cause.* One commenter asked: If a household is required to move for nonpayment of rent after the property owner has requested assistance, but before the project is approved (or before the project is begun), is the household eligible for benefits? Sections 570.496a(c)(3)(ii)(B)(1) and 570.806(c)(3)(ii)(B)(1) provide that "a person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement" does not qualify for relocation assistance, if the grantee/recipient determines "that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance." Repeated nonpayment of rent by a household may be considered "violations of material terms of the lease;" thus, the household evicted for this reason may be excluded from benefits without regard to when the household moves.

*Project Not Approved.* It is possible that a property owner may require an occupant of the property to move before the grantee/recipient makes a decision on the property owner's request for assistance. One commenter asked if there is any liability on the part of the owner or the grantee/recipient to provide relocation assistance to such

person if the property owner's request for assistance is not approved.

If the owner's application is not approved and no federal financial assistance is provided, such displacement is not subject to either section 104(d) or the URA.

#### X. HUD Monitoring of Displacement

One commenter emphasized the importance of HUD's monitoring displacement before it happens to ensure that displacement will be minimized and to ensure that tenants are provided with appropriate assistance.

The relocation assistance standards under the rule require grantee/recipients to provide substantial levels of assistance to low/moderate-income persons displaced as a result of a covered activity. The requirement to make these payments acts as a strong deterrent to avoidable displacement. Given staffing and budgetary constraints, the nature of these HUD-assisted programs (where the delay of an activity can cause hardship and have serious economic consequences), HUD's monitoring of compliance with the requirements of this rule usually occurs after the displacement has occurred.

To determine whether displaced persons have received proper levels of relocation assistance, HUD carefully examines grantee/recipient records for randomly selected relocation cases. In addition, on a random basis, HUD interviews displaced persons and inspects replacement properties. Special attention is given to the displacement of low- and moderate-income households from their dwellings. Violations result in a requirement for remedial action.

#### XI. Responsibility of Grantee

One commenter argued that the regulations are unclear as to the joint responsibility of the developer and the displacing agency to implement the provisions of the interim rule.

The Department does not believe that the regulations are unclear. It is not a question of joint responsibility because HUD holds the grantee/recipient responsible for implementing the rule's provisions. As a condition for receiving financial assistance, the grantee/recipient must certify compliance with the rule—failure to comply is a breach of the contract. Also, HUD will look to the grantee/recipient as the party with responsibility for ensuring that required payments are made and other provisions of the rule are properly followed, notwithstanding that a developer may be performing the actual work resulting in displacement and may have a

contractual obligation to the grantee/recipient.

#### XII. Applicability of Section 104(d) Provisions to New Grants

Under the interim rule, for all grants except entitlement grants, the section 104(d) provisions apply only to grants made by HUD on or after October 1, 1988. Thus, under the State CDBG program, the provisions govern grants to recipients made by the State using funds from a HUD grant made to the State after September 30, 1988.

For entitlement grants, the section 104(d) provisions govern all activities for which funds are first committed by the grantee on or after the date of the first grant made by HUD after September 30, 1988, without regard to the source year of the funds used for the activity.

Several commenters argued that the interim rule should apply to any activity for which CDBG money is promised after September 30, 1988. Another commenter thought that the effective date provisions are unclear and asked whether these provisions applied only to 1988-89 funds.

No change in the applicability of the rule to CDBG Entitlement grants or UDAGs has been made. However, the Department has determined that all new grants made by States on or after the effective date of this rule will be subject to its provisions, without regard to the source year of the funds.

#### XIII. Section 104(k) Comments

Section 104(k) of the Act requires grantees to provide reasonable benefits to any person "involuntarily and permanently displaced" as a result of the use of CDBG/UDAG assistance to acquire or substantially rehabilitate a property. The 1987 amendments to the URA require the provision of relocation assistance to all persons displaced as a direct result of acquisition, rehabilitation, or demolition for a federally assisted activity. As noted in the preamble to the interim rule, the URA amendments apply to all persons covered by section 104(k). Since the 1987 amendments to the URA effectively supersede the provisions under section 104(k), providing greater levels of assistance to displaced persons covered by section 104(k), the provisions implementing section 104(k) have been deleted from the final rule.

#### Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of

1989. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant

economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided under the CDBG or UDAG programs, but rather modifies and updates program requirements to comport with recently enacted legislation.

*Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule will not have potential significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the order. The rule ensures that families that are affected by displacement activity receive adequate assistance with respect to their relocation.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 9(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on

individuals and businesses; any involvement of States or their political subdivisions is limited to their use as conduits for the receipt and disbursement of Federal funds.

This rule was listed as Item No. 1206 in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16253) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, 14.221, 14.225 and 14.227.

**Information Collection**

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501-3520) and assigned OMB control number 2506-0102. The following chart provides estimates of public reporting burden of these provisions. It is estimated to include the time for reviewing the requirements, searching existing data sources, gathering and maintaining the information needed.

**TABULATION OF ANNUAL REPORTING BURDEN; FINAL RULE—COMMUNITY DEVELOPMENT BLOCK GRANTS; DISPLACEMENT, RELOCATION, ACQUISITION AND REPLACEMENT OF HOUSING**

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	OMB No. 2506-
Grantee/recipient antidisplacement and relocation assistance plan.	570.496a(c) and 570.606(c)	1,200	1	1,200	.5	600	0102
Grantee/recipient plan for providing replacement housing.	570.496a(c)(1) and 570.606(c)(1)	600	1	600	20	12,000	0102
Request for exception from one-for-one replacement housing requirement.	570.496a(c)(1)(IV) and 570.606(c)(1)(IV)	50	1	50	40	2,000	0102
Optional relocation assistance	570.496a(d) and 570.606(d)	120	1	120	10	1,200	0102
Appeals	570.496a(f) and 570.606(f)	50	1	50	20	1,000	0102
Total burden						16,800	

**List of Subjects in 24 CFR Part 570**

Community development block grants; Grant programs: housing and community development; Loan programs: housing and community development; Low- and moderate-income housing; New communities; Pockets of poverty; Small cities.

Accordingly, the Department amends 24 CFR part 570 as follows:

**PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

1. The authority citation for part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-

5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.201, paragraph (i) revised to read as follows:

**§ 570.201 Basic eligible activities.**

\* \* \* \* \*

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is (1) required under the provisions of § 570.606 (b) or (c); or (2) determined by the grantee to be appropriate under the provisions of § 570.606(d).

\* \* \* \* \*

3. In § 570.301(b)(1)(iv), the reference to § 570.606(b) is revised to read § 570.606(c).

4. In § 570.303, paragraph (h) is revised to read as follows:

**§ 570.303 Certifications.**

\* \* \* \* \*

(h) It will comply (i.e., provide assurance of compliance as required by 49 CFR part 24) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as required under § 570.606(b) and Federal implementing regulations; and the requirements in § 570.606(c) governing the residential

antidisplacement and relocation assistance plan under section 104(d) of the Act (including a certification that the grantee is following such a plan); and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

\* \* \* \* \*

5. Section 570.403(i)(2) is revised to read as follows:

**§ 570.403 New communities.**

\* \* \* \* \*

(i) \* \* \*  
(2) The provisions of Subpart K, Other Program Requirements, shall be applicable to recipients, except that a community association or private developer eligible under § 570.403(b)(2) is not subject to the provisions of the Hatch Act.

\* \* \* \* \*

6. In § 570.410(f), the reference to 24 CFR 570.307 is revised to read 24 CFR 570.303.

7. Section 570.457 is revised to read as follows:

**§ 570.457 Displacement, relocation, acquisition, and replacement of housing.**

The displacement, relocation, acquisition, and replacement of housing requirements of § 570.606 apply to applicants under this subpart G.

8. In § 570.458, paragraph (c)(14)(ix)(I) is amended to read as follows:

**§ 570.458 Full applications.**

\* \* \* \* \*

(c) \* \* \*  
(14) \* \* \*  
(ix) \* \* \*

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as required under § 570.606(b) and Federal implementing regulations; the requirements in § 570.606(c) governing the residential antidisplacement and relocation assistance plan section 104(d) of the Act (including a certification that the grantee is following such a plan); and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act; and

\* \* \* \* \*

9. Section 570.496a is revised to read as follows:

**§ 570.496a Displacement, relocation, acquisition, and replacement of housing.**

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, the State and state recipients shall assure that they have taken all reasonable

steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Relocation assistance for displaced persons at URA levels.* (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24 which contains the regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) *Displaced person.* (i) For purposes of this paragraph (b), the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from the real property, or moves his or her personal property from the real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the recipient to move permanently from the property, if the move occurs on or after the date of the initial submission of an application to the State requesting assistance under this subpart that is later granted for the requested activity.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i) (A) or (B) of this section, if either HUD or the State determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the "initiation of negotiations", if the person is the tenant occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, under reasonable terms and conditions, including a monthly rent that does not exceed the greater of: the tenant's monthly rent and estimated average utility costs before the initiation of negotiations; or 30 percent of the household's average monthly gross income; or

(2) The tenant, required to relocate temporarily for the activity, does not

return to the building/complex; and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary location (including the cost of moving to and from the temporary location and any increased housing costs), or other conditions of the temporary relocation are not reasonable; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term "displaced person" does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the State or state recipient must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the State determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A State or state recipient may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing assistance to be provided under this paragraph, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term "initiation of negotiations" means the execution of the grant or loan agreement between the State or state recipient and the person owning or controlling the real property.

(c) *Residential antidisplacement and relocation assistance plan.* In accordance with section 104(d) of the Act, each State must ensure that each state recipient adopts, makes public, and certifies to the State that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units

(paragraph (c)(1) of this section), and relocation assistance (paragraph (c)(2) of this section). Under section 106(d)(5)(A) of the Act, the state recipient must also certify to the State that it will minimize displacement of persons as a result of assisted activities.

(1) *One-for-one replacement of low/moderate-income dwelling units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units.

(ii) Replacement low/moderate-income dwelling units may be provided by any government agency or private developer, and must meet the following requirements:

(A) The units must be located within the state recipient's jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(B) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The state recipient may not replace units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the state recipient has provided the information required under paragraph (c)(1)(iii)(G) of this section.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include vacant units that have been raised to standard from substandard condition if (1) no person was displaced from the unit as a direct result of an assisted activity (see definition of "displaced person" in paragraph (c)(3)(ii) of this section), and (2) the unit was vacant for at least three months before execution of the agreement between the recipient and the property owner.

(D) The units must initially be made available for occupancy during the period beginning one year before the state recipient's submission of the information required under paragraph (c)(1)(iii) of this section and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

(E) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date

of initial occupancy. Replacement low/moderate-income dwelling units may include, but are not limited to, public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937.

(iii) Before the state recipient enters into a contract committing it to provide funds under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the recipient must make public and submit the following information in writing to the State:

(A) A description of the proposed assisted activity;

(B) The location on a map and the number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy; and

(G) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the housing needs of low-and moderate-income households in the jurisdiction.

(iv)(A) The one-for-one replacement requirement of this paragraph (c)(1) does not apply to the extent the Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the state recipient's jurisdiction. In determining the adequacy of supply, HUD will consider whether the demolition or conversion of the low/

moderate-income dwelling units will have a material impact on the ability of low- and moderate-income households to find suitable housing. HUD will consider relevant evidence of housing supply and demand including, but not limited to, the following factors: the housing vacancy rate in the jurisdiction; the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted); the number of eligible families on waiting lists for housing assisted in the jurisdiction under the United States Housing Act of 1937; and relevant past or predicted demographic changes.

(B) HUD may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the state recipient's jurisdiction. Such additional dwelling units shall be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. HUD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The recipient must submit the request for determination under this paragraph (c)(1)(iv) to the State. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to HUD.

(2) *Relocation assistance under section 104(d) of the Act.* Under section 104(d), each "displaced person" (defined in paragraph (c)(3)(ii) of this section) is entitled to choose to receive either assistance at URA levels (see paragraph (b) of this section) or the following relocation assistance:

(i) Advisory services at the level described in 49 CFR part 24, subpart C (General Relocation Requirements). The state recipient shall advise tenants of their rights under the Fair Housing Act (42 U.S.C. 3601-19) and of replacement housing opportunities in such a manner that, to the extent feasible, they will have a choice between relocating within their neighborhoods and other

neighborhoods consistent with the state recipient's responsibility to affirmatively further fair housing;

(ii) Payment for moving expenses at the levels described in 49 CFR part 24, subpart D.

(iii) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit; and

(iv) Interim living costs. The state recipient shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if (A) the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public, or (B) the person is displaced from a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iii) of this section), none of the available comparable replacement dwelling units (defined in paragraph (c)(3)(i) of this section) qualifies as a low/moderate-income dwelling unit, and a suitable low/moderate-income dwelling unit is scheduled to become available in accordance with paragraph (c)(1) of this section. (Because a "comparable replacement dwelling unit" may be made affordable through a rental assistance payment and its market rent may exceed the Fair Market Rent (FMR) under the Section 8 Existing Housing Program, it may not meet the definition of a "low/moderate-income dwelling unit.")

(v) Replacement housing assistance. Persons are eligible to receive one of the following two forms of replacement housing assistance:

(A) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the "Total Tenant Payment," as determined under § 813.107 of this title. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance (if available) provided through the Local Public Agency (PHA) under Section 8 of the United States Housing Act of 1937. If a section 8 certificate or housing voucher is provided to a person, the State recipient must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program. To

the extent that cash assistance is provided, it may, at the discretion of the State recipient, be in either a lump sum or in installments.

(B) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the "Total Tenant Payment," as determined under § 813.107 of this title from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business within the state recipient's jurisdiction. To the extent necessary to minimize hardships to the household, the state recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(C) Displaced low/moderate income tenants shall be advised of their right to elect relocation assistance pursuant to the Uniform Relocation regulations appearing at 49 CFR part 24 as an alternative to the relocation assistance available under paragraph (c)(2) of this section.

(3) *Definitions.* For purposes of providing section 104(d) assistance under this paragraph (c):

(i) *Comparable replacement dwelling unit.* The term "comparable replacement dwelling unit" means a dwelling unit that (A) meets the criteria of 49 CFR 24.2(d) (1) through (6); and (B) is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" as determined under § 813.107, of this title after taking into account any rental assistance the household would receive.

(ii) *Displaced person.* (A) The term "displaced person" means any low/moderate-income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iv) of this section) or demolition in connection with an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent

move from the real property that is made:

(1) After notice by the state recipient to move permanently from the property, if the move occurs after the initial submission of an application to the State by the recipient requesting assistance under this subpart that is later granted for the requested activity.

(2) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph (c)(3)(ii)(A) (1) or (2) of this section if the state recipient, the State, or HUD determines that the displacement directly resulted from the conversion of a low/moderate-income dwelling unit or demolition in connection with the requested activity.

(4) After the execution of the agreement by the state recipient covering the rehabilitation or demolition, if the person is a tenant-occupant of a dwelling unit, but:

(i) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex following the completion of the project, at a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the "initiation of negotiations" or the "Total Tenant Payment" for the person as determined under § 813.107 of this title; or

(ii) The tenant, required to relocate temporarily for the activity; does not return to the building/complex; and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary location (including the cost of moving to and from the temporary location and any increased housing costs), or other conditions of the temporary relocation are not reasonable; or

(iii) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(B) Notwithstanding the provisions of paragraph (c)(3)(ii)(A) of this section, the term "displaced person" does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the state recipient must determine that the eviction was

not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date described in paragraph (c)(3)(ii)(A) (1) or (2) of this section, but received a written notice of the expected displacement before occupancy.

(3) A person who is not displaced as defined under 49 CFR 24.2(g)(2).

(4) A person who the State determines is not displaced as a direct result of the conversion of a low/moderate-income dwelling or demolition in connection with an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(C) A State may, at any time, request HUD to determine whether a person is a "displaced person" under this section.

(iii) *Low/moderate-income dwelling unit.* The term "low/moderate-income dwelling unit" means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR Part 888, except that the term does not include a unit that is owned and occupied by the same person before and after the assisted rehabilitation.

(iv) *Standard condition and substandard condition suitable for rehabilitation.* A State may define the terms "standard condition" and "substandard condition suitable for rehabilitation" or may allow the state recipient to establish and make public its definition of these terms. If a state permits the recipient to establish its definition of these terms, the State must determine if the state recipient's definition is acceptable.

(v) *Vacant occupiable dwelling unit.* The term "vacant occupiable dwelling unit" means a vacant dwelling unit that is in a standard condition; or a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning one year before the date of execution of the agreement by the state recipient covering the rehabilitation or demolition.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the State may permit the state recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c)(2) of this section. The State also may permit the state recipient to provide relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those

required by these paragraphs. Unless such assistance is provided under State or local law, the state recipient shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The state recipient also must adopt a written policy available to the public that describes the relocation assistance the state recipient has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) *Appeals.* If a person disagrees with the state recipient's determination concerning the persons's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the state recipient. The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low/moderate-income person may file a written request for review of the state recipient's decision with the State.

(g) *Responsibility of State.* (1) The State is responsible for ensuring compliance with the requirements of this section by its state recipients and shall require state recipients to certify that they will comply with the provisions of this section, notwithstanding any third party's contractual obligation to the state recipient to comply with the provisions of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The State and the state recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102.)

10. Section 570.606 is revised to read as follows:

**§ 570.606 Displacement, relocation, acquisition, and replacement of housing.**

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Relocation assistance for displaced persons at URA levels.* (1) A displaced person shall be provided with

relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24 which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) *Displaced person.* (i) For purposes of this paragraph (b), the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee to move permanently from the property, if the move occurs on or after the date of the initial submission to HUD of the final statement under 24 CFR 570.302(a)(2) for activities under the entitlement program; the initial submission to HUD of an application for assistance under §§ 570.426, 570.430, or 570.435(d) that is later granted for activities governed by the HUD-administered small cities program; the submission to HUD of an application for assistance under § 570.458 that is later granted for activities under the UDAG program; the submission to HUD of an application for assistance under part 570, subpart G (Special Purpose Grants) that is later granted; or the submission to HUD of an application for loan guarantee assistance under § 570.701 that is later provided for an activity under the section 108 loan guarantee program.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i) (A) or (B) of this section, if either HUD or the grantee determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the "initiation of negotiations" if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/

complex upon the completion of the project under reasonable terms and conditions, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but (i) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable and (ii) the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term "displaced person" does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i) (A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing assistance to be provided under this paragraph, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term "initiation of negotiations" means the execution of the grant or loan agreement between the grantee and the person owning or controlling the real property.

(c) *Residential antidisplacement and relocation assistance plan.* In accordance with section 104(d) of the Act, each grantee must adopt, make public, and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (c)(1) of this section), and relocation assistance (paragraph (c)(2) of this section). The plan shall also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any activities assisted under this part.

(1) *One-for-one replacement of low/moderate-income dwelling units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units.

(ii) Replacement low/moderate-income dwelling units may be provided by any government agency or private developer, and must meet the following requirements:

(A) The units must be located within the grantee's jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(B) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the grantee has provided the information required under paragraph (c)(1)(iii)(G) of this section.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition if (1) no person was displaced from the unit as a direct result of an assist activity (see definition of displaced person in paragraph (c)(3)(ii) of this section, and (2) the unit was vacant for at least three months before execution of the agreement between the grantee and the property owner.

(D) The units must initially be made available for occupancy at any time during the period beginning one year

before the grantee's submission of the information required under paragraph (c)(1)(iii) of this section and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

(E) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy. Replacement low/moderate-income dwelling units may include, but are not limited to, public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937.

(iii) Before the grantee enters into a contract committing it to provide funds under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make public, and submit the following information in writing to the HUD Field Office for monitoring purposes:

(A) A description of the proposed assisted activity;

(B) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy; and

(G) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the HUD-approved Housing Assistance Plan. A grantee that is not required to submit a Housing Assistance Plan to HUD must

submit information demonstrating that the proposed replacement is consistent with the housing needs of low- and moderate-income households in the jurisdiction.

(iv)(A) The one-for-one replacement requirement of this paragraph (c)(1) does not apply to the extent the Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In determining the adequacy of supply, HUD will consider whether the demolition or conversion of the low/moderate-income dwelling units will have a material impact on the ability of low- and moderate-income households to find suitable housing. HUD will consider relevant evidence of housing supply and demand including, but not limited to, the following factors: the housing vacancy rate in the jurisdiction; the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted); the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction; the needs analysis contained in any applicable HUD-approved Housing Assistance Plan; and relevant past or predicted demographic changes.

(B) HUD may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. HUD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The grantee must submit the request for determination under this paragraph (c)(1)(iv) directly to the Field Office. Simultaneously with the submission of the request, the grantee must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.

(2) *Relocation assistance under section 104(d) of the Act.* Under section 104(d), each "displaced person" (defined in paragraph (c)(3)(ii) of this section) is entitled to choose to receive either assistance at URA levels (see paragraph

(b) of this section) or the following relocation assistance:

(i) Advisory services at the levels described in 49 CFR part 24, subpart C (General Relocation Requirements). Tenants shall be advised of their rights under the Fair Housing Act (42 U.S.C. 3601-19) and of replacement housing opportunities in such a manner that, to the extent feasible, will provide a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(ii) Payment for moving expenses at the levels described in 49 CFR part 24, subpart D.

(iii) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.

(iv) Interim living costs. The grantee shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if (A) the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public, or (B) the person is displaced from a "low/moderate-income dwelling unit," none of the comparable replacement dwelling units to which the person has been referred qualifies as a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iii) of this section), and a suitable low/moderate-income dwelling unit is scheduled to become available in accordance with paragraph (c)(1) of this section. (Because a "comparable replacement dwelling unit" may be made affordable to a person through a rental assistance payment and its market rent may exceed the Fair Market Rent (FMR) under the Section 8 Existing Housing Program, it may not meet the definition of a "low/moderate-income dwelling unit.")

(v) Replacement housing assistance. Persons are eligible to receive one of the following two forms of replacement housing assistance:

(A) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the "Total Tenant Payment," as determined under § 813.107 of this title. All or a portion of this assistance may be offered through a

certificate or housing voucher for rental assistance (if available) provided through the Local Public Agency (PHA) under Section 8 of the United States Housing Act of 1937. If a Section 8 certificate or housing voucher is provided to a person, the grantee must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program. To the extent that cash assistance is provided, it may, at the discretion of the grantee, be in either a lump sum or in installments.

(B) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the "Total Tenant Payment," as determined under § 813.107 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured bank of savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(C) Displaced low/moderate income tenants shall be advised of their right to elect relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the regulations appearing at 49 CFR part 24 as an alternative to the relocation assistance available under paragraph (c)(2) of this section.

(3) *Definitions.* For purposes of providing section 104(d) assistance under this paragraph (c):

(i) *Comparable replacement dwelling unit.* The term "comparable replacement dwelling unit" means a dwelling unit that (A) meets the criteria of 49 CFR 24.2(d)(1) through (6); and (B) is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under § 813.107 of this title, after taking into account any rental assistance the household would receive.

(ii) *Displaced person.* (A) The term "displaced person" means any low/

moderate-income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iv) of this section) or demolition in connection with an activity assisted under this part. A permanent involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the grantee to move permanently from the property, if the move occurs after the initial submission to HUD of the final statement under 24 CFR 570.302(a)(2) for activities under the entitlements program; the initial submission to HUD of an application for assistance under § 570.426, § 570.430, or § 570.435(d) that is later granted for activities governed by the HUD-administered small cities program; the submission to HUD of an application for assistance under § 570.458 that is later granted for activities under the UDAG program; or the submission to HUD of an application for loan guarantee assistance under § 570.701 that is later provided for the activity under the section 108 loan guarantee program.

(2) After notice by the property owner, to move permanently from the property, if the move occurs after the date of submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph (c)(3)(ii)(A) (1) or (2) of this section, if either HUD or the grantee determines that the displacement directly resulted from the conversion of a low/moderate-income dwelling unit or demolition in connection with the requested activity.

(4) After the execution of the agreement by the grantee covering the rehabilitation or demolition, if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(i) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon completion of the project, under reasonable terms and conditions, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the execution of such agreement, or the "Total Tenant Payment" for the person as determined under § 813.107 of this title; or

(ii) The tenant, required to relocate temporarily for the activity, does not return to the building/complex; and either the tenant is not offered payment

for all reasonable out-of-pocket expenses incurred in connection with the temporary location (including the cost of moving to and from the temporary location and any increased housing costs), or other conditions of the temporary relocation are not reasonable; or

(iii) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(B) Notwithstanding the provisions of paragraph (c)(3)(ii)(A) of this section, the term "displaced person" does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph (c)(3)(ii)(A) (1) or (2) of this section, but received a written notice of the expected displacement before commencing occupancy.

(3) A person who is not displaced as defined under 49 CFR 24.2(g)(2).

(4) A person who the grantee determines is not displaced as a direct result of the conversion of a low/moderate-income dwelling or demolition in connection with an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(5) A grantee may, at any time, request HUD to determine whether a person is a displaced person under this paragraph (c).

(iii) *Low/moderate-income dwelling unit.* The term "low/moderate-income dwelling unit" means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR Part 888, except that the term does not include a unit that is owned and occupied by the same person before and after the assisted rehabilitation.

(iv) *Standard condition and substandard condition suitable for rehabilitation.* If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. If grantee is not required to submit a Housing Assistance Plan to HUD, the grantee must establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1).

(v) *Vacant occupiable dwelling unit.* The term "vacant occupiable dwelling unit" means a vacant dwelling unit that is in a standard condition; a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning one year before the date of execution of the agreement by the grantee covering the rehabilitation or demolition.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)). The grantee must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) *Appeals.* If a person disagrees with the grantee's determination concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee. The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office.

(g) *Responsibility of grantee.* (1) The grantee is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate

compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102.)

11. In § 507.702, paragraph (f) is revised to read as follows:

§ 507.702 Application requirements.

(f) Displacement, relocation, acquisition, and replacement of housing. The applicant (or the designated public agency) shall comply with the displacement, relocation, acquisition and replacement of housing requirements in § 507.606 in connection with any activity financed in whole or in part with a loan guarantee under this subpart.

Date: July 2, 1990.
Anna Kondratas,
Assistant Secretary for Community Planning and Development.
[FR Doc. 90-16665 Filed 7-17-90; 8:45 am]
BILLING CODE 4210-29-M

...the applicant shall...
...the designated public agency...
...the displacement, relocation, acquisition...
...the replacement of housing requirements...
...in connection with any activity...
...financed in whole or in part...
...with a loan guarantee under this...
...subpart.

...the applicant shall...
...the designated public agency...
...the displacement, relocation, acquisition...
...the replacement of housing requirements...
...in connection with any activity...
...financed in whole or in part...
...with a loan guarantee under this...
...subpart.

Wednesday  
July 18, 1990

# Federal Register

## Part III

# Department of Commerce

15 CFR Part 8b

**Enforcement of Nondiscrimination on the  
Basis of Handicap in Federally Assisted  
Programs; Final Rule**

## DEPARTMENT OF COMMERCE

## 15 CFR Part 8b

[Docket No. 81256-0093]

RIN 0690-A023

**Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs**

AGENCY: Department of Commerce.

ACTION: Final rule.

**SUMMARY:** This rule amends the regulation issued by the Department of Commerce (Commerce) for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

**EFFECTIVE DATE:** August 17, 1990.

**ADDRESSES:** Copies of this notice are available on tape for persons with impaired vision. They may be obtained from the Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230; (202) 377-4993.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Cizek, Chief, Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-4993 (voice) or (202) 377-5691 (TDD). These are not toll free numbers.

**SUPPLEMENTARY INFORMATION:** On July 25, 1989 (54 FR 31002), Commerce published a proposed rule that would amend its existing regulation for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to UFAS. Commerce received no comments. It decided to adopt the rule as final.

**Background**

Section 504 (29 U.S.C. 794) provides in part that—

No otherwise qualified individual with handicaps in the United States \* \* \* shall, solely by reason of her or his handicap, be

excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance \* \* \*

Commerce's current section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It requires that new construction or alteration meet the most current standard for physical accessibility prescribed by the General Services Administration (GSA) under the Architectural Barriers Act. It provides that alternative standards may be adopted when it is clearly evident that equivalent or greater access to the facility is thereby provided. The revision set forth in this document will reference UFAS in place of the current standard. In this respect, the amendment is largely a technical one, because (as explained below) UFAS is now GSA's standard prescribed under the Barriers Act.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under Architectural Barriers Act [49 FR 31528 (see discussion *infra*)]. The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

**Background of Accessibility Standards**

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (GSA, the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service) to prescribe the accessibility standards. Section 502(b)(7) of the Rehabilitation Act of 1973, as amended, directed the Architectural and Transportation

Barriers Compliance Board (ATBCB) to issue minimum guidelines and requirements for these standards. 29 U.S.C. 792(b)(7). The guidelines<sup>1</sup> now in effect are found at 36 CFR part 1190.<sup>2</sup>

In 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. GSA and Department of the Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (see 41 CFR subpart 101-19.6 and 24 CFR part 40, respectively). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The original ANSI A117.1 was adopted in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1-1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

The final rule amends the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from the Department of Commerce to refer to UFAS.

Commerce has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following

<sup>1</sup> The minimum guidelines were established on August 4, 1982 [47 FR 33864], and amended on September 14, 1988 [53 FR 35510], February 3, 1989 [54 FR 5444], and August 23, 1989 [54 FR 34977].

<sup>2</sup> The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653-7834 [voice/TDD]. This is not a toll free number.

applicable State or local codes, and vice versa.

Some facilities may be covered by both section 504 and the Architectural Barriers Act. Nothing in this rule relieves recipients whose facilities are covered by the Barriers Act and the Act's implementing regulations from complying with the requirements of UFAS or any other Barriers Act standard or requirements that may be in effect.

#### Effect of Amendment

Commerce's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment does not affect these requirements but merely provides that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed in compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (see, e.g., UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," Commerce anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS.

Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360-degree turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2.(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients

meet the standards for new construction and alterations.<sup>3</sup> Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

UFAS contains specific requirements for additions to existing buildings (see UFAS section 4.1.5.). The amendment references UFAS for "design, new construction, or alteration of buildings," and does not mention additions specifically. For purposes of section 504, an addition is considered "new construction" or "alteration." Thus, the lack of reference to additions in the rule should not be read to exempt additions from the accessibility requirements.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101-19.6.

The revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible buildings: Alterations*. Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted by the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This

<sup>3</sup> This will be the case even if UFAS is revised to be consistent with a 1988 amendment to the ATBCB minimum guidelines to provide minimum guidelines and requirements for accessible leased facilities. On September 14, 1988 [53 FR at 35510], the ATBCB amended its minimum guidelines to establish requirements for standards for buildings leased by the Federal Government. 36 CFR 1190.34 (1989). The requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. These requirements will be incorporated into UFAS and will apply to buildings covered by the Architectural Barriers Act. However, existing buildings leased by recipients are not covered by the Act unless the buildings are to be altered.

exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment of residence therein of persons with handicaps.

This exception does not apply to a room merely because it contains mechanical equipment. For instance, the exception shall not be read to exempt from the requirements of UFAS a "mechanical room" with a photocopier, control mechanisms and operating equipment for a large heating and air conditioning system, and controls for a security system. Since the room would be frequented by employees, it is not excepted from UFAS. In this case, the control mechanisms, including switches, thermostats, and alarms, used by employees should be on an accessible path and mounted at the proper height.

The revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

**Rulemaking Requirements**

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development

of this document in accordance with 28 CFR 41.7.

The regulation is not a major rule within the meaning of Executive Order 12291 of February 17, 1981 and, therefore, a regulatory impact analysis has not been prepared.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, will not have a significant economic impact on small business entities. Because its effect will be upon individuals, ensuring that no qualified individual with handicaps will, on the basis of these handicaps, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any federally assisted program or activity, the rule will not significantly impact the entities regarding costs of compliance with the rule, costs of completing paperwork or recordkeeping requests, the competitive positions of small entities in relation to larger entities, cash flow and liquidity of small entities, or the ability of a small entity to remain in the market. Therefore, a Regulatory Flexibility Analysis has not been prepared for purposes of the Regulatory Flexibility Act.

This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 of October 26, 1987.

**List of Subjects in 15 CFR Part 8b**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reason set forth in the preamble, 15 CFR part 8b is amended as follows:

**PART 8b—[AMENDED]**

1. The authority citation for part 8b is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Section 8b.18, paragraph (c) is revised to read as follows:

**§ 8b.18 New construction.**

\* \* \* \* \*

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of August 17, 1990, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Thomas J. Collamore,  
Assistant Secretary for Administration.  
[FR Doc. 90-16695 Filed 7-17-90; 8:45 am]

BILLING CODE 3510-BT-M

Wednesday  
July 18, 1990

# Notices

# Registered

## Part IV

## Department of the Interior

### Minerals Management Service

#### Outer Continental Shelf, Western Gulf of Mexico; Oil and Gas Lease Sale 125; Notices

4310-MR

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf  
Western Gulf of Mexico  
Oil and Gas Lease Sale 125

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356 (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., Tuesday, August 21, 1990. All times cited in this Notice refer to Central Standard Time (C.S.T.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, August 22, 1990. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m., Tuesday, August 21, 1990. Bid Opening Time will be 9 a.m., Wednesday, August 22, 1990, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register on April 9, 1990, at 55 FR 13197.

3. Method of Bidding. A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 125, (map number, map name, and block number(s)), not to be opened until 9 a.m., C.S.T., August 22, 1990," must be submitted for each block or prescribed bidding unit bid upon. The company qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 125, NG 14-3, Corpus Christi, Block 455, not to be opened until 9 a.m., Wednesday, August 22, 1990, Overthrust Inc. No. 1093." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts

(no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. The company qualification number should also appear on the check or draft together with bid block identification. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of \$25 or more per acre or fraction thereof. All leases awarded will provide for a yearly rental payment of \$3 per acre or fraction thereof. All leases will provide for a minimum royalty of \$3 per acre or fraction thereof. The bidding systems to be employed for this sale apply to blocks or bidding units as shown on Map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12 1/2-Percent Royalty. Bids on the blocks and bidding units offered under this bidding system must be submitted on a cash bonus basis with a fixed royalty of 12 1/2-percent.

(b) Bonus Bidding with a 16 2/3-Percent Royalty. Bids on the blocks and bidding units offered under this bidding system must be submitted on a cash bonus basis with a fixed royalty of 16 2/3-percent.

5. Equal Opportunity. Each bidder must qualify for the sale by submitting prior to the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See the Affirmative Action paragraph 14(e) under "Information to Lessees."

Leasing Maps or Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps--Texas Set. This set of 16 maps sells for \$18.

Map 1	South Padre Island Area
Map 1A	South Padre Island Area, East Addition
Map 2	North Padre Island Area
Map 2A	North Padre Island Area, East Addition
Map 3	Mustang Island Area
Map 3A	Mustang Island Area, East Addition
Map 4	Matagorda Island Area
Map 5	Brazos Area
Map 5B	Brazos Area, South Addition
Map 6	Galveston Area
Map 6A	Galveston Area, South Addition
Map 7	High Island Area
Map 7A	High Island Area, East Addition
Map 7B	High Island Area, South Addition
Map 7C	High Island Area, East Addition, South Extension
Map 8	Sabine Pass Area

(b) OCS Protraction Diagrams. The diagrams in this set sell for \$2 each.

NG 14-3	Corpus Christi (revised 1/27/76)
NG 14-6	Port Isabel (revised 04/27/89)
NG 15-1	East Breaks (revised 1/27/76)
NG 15-2	Garden Banks (revised 10/19/81)
NG 15-4	Alaminos Canyon (revised 04/27/89)
NG 15-5	Keathley Canyon (revised 04/27/89)
NG 15-8	(No Name) (revised 04/27/89)

(c) A complete set of both OCS Leasing Maps and all OCS Protraction Diagrams are available on microfiche for \$5 per set.

## 12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)):

- (1) Western Gulf of Mexico Lease Sale 123 - Final. Unleased Split Blocks.

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid may be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of \$25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations will be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following

Sale 125 Update List

The following blocks have become available for leasing since publication of the Proposed Notice of Sale 125. This list is being furnished for your convenience.

<u>Mustang Island East Addition</u>	<u>Galveston South Addition</u>	<u>High Island East Addition</u>
A-51	A-221	46
A-63		
A-86	<u>High Island</u>	
A-120	71	
	(Portion)	
	A-76	<u>High Island East Addition South Extension</u>
<u>Katagorda Island</u>		A-320
558		
565		
652	<u>High Island South Addition</u>	<u>Garden Banks</u>
	A-425	171
<u>BRAGOS</u>	A-432	172
474	A-479	
A-16	A-512	
	A-513	
<u>BIRROS, South</u>	A-520	
A-68		
A-79		

Please Note

Galveston Block 424 and High Island, East Addition block 119 were erroneously excluded from the leased block list for the Proposed Notice of Sale 125. They are leased and appear on the leased block list contained in the Final Notice of Sale 125.

(2) Western Gulf of Mexico Lease Sale 125 - Final. Unleased acreage of blocks with Aliquots Under Lease.

(b) Maps 1, 2, and 3 referred to in this Notice are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 125 - Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 125 - Final. Bidding Systems and Bidding Units." Refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 125 - Final. Detailed Maps of Biologically Sensitive Areas." Pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c) except for those blocks or partial blocks described in pages 7 through 14 of this Notice.

(e) The proposed Notice for this sale, which was issued in March 1990, listed all Federal acreage under lease at that time. Subsequent lease expirations and relinquishments by lessees, however, have resulted in the availability of a number of such previously leased blocks for bidding in this sale. For the convenience of potential bidders, these newly available blocks are listed on page 6 of this Notice.





High Island South Addition (continued)	High Island East Addition (continued)	High Island East Addition S. Extension (continued)	High Island East Addition S. Extension (continued)	Sabine Pass	East Breaks (continued)	East Breaks (continued)	East Breaks (continued)	Garden Banks (continued)	Garden Banks (continued)	Garden Banks (continued)	Garden Banks (continued)
A-586	A-196	A-281	A-345	17	514	649	68	168	237	335	
A-587	A-200	A-282	A-347	18	519	684	69	170	239	339	
A-590	A-201	A-283	A-348	40	520	685	70	173	240	341	
A-591	A-205	A-285	A-349		523	686	71	179	241	342	
A-593	A-206	A-286	A-350		524	688	72	181	242	343	
A-594	A-207	A-288	A-351		525	689	80	183	244	344	
A-595	A-217	A-289	A-352		526	690	81	184	245	345	
A-596	A-218	A-290	A-353		527	691	83	185	248	346	
	A-224	A-293	A-354		528	692	84	186	250	348	
	A-228	A-294	A-355		529	692	85	187	251	349	
	A-230	A-295	A-356	Corpus Christi	530	729	95	188	252	360	
	A-231	A-296	A-357		531	732	96	189	253	361	
	A-233	A-297	A-360		532	739	97	191	259	362	
	A-237	A-302	A-361		535	740	98	192	260	363	
	A-239	A-303	A-362		536	741	102	193	271	365	
	A-240	A-306	A-363		537	784	105	195	272	366	
	A-244	A-307	A-365		538	785	106	196	273	370	
	A-245	A-308	A-366		539	784	112	197	274	371	
	A-250	A-309	A-367		540	904	115	198	275	372	
	A-253	A-310	A-368		541	945	122	199	276	374	
	A-254	A-312	A-369		542	946	124	200	277	375	
	A-254	A-313	A-370		543	945	125	202	278	376	
	A-255	A-314	A-371		544	946	126	205	280	377	
	A-259	A-315	A-372		545	945	127	207	282	378	
		A-317	A-373		546	946	128	208	283	380	
		A-318	A-374		547	945	129	210	284	382	
		A-321	A-376	East Breaks	548	991	134	211	285	386	
		A-322	A-377		549	992	139	212	287	387	
		A-323	A-378		550		140	213	288	388	
		A-325	A-379		551		141	215	299	389	
		A-326	A-381		552		142	216	300	390	
		A-327	A-382		553		143	217	302	399	
		A-329	A-383		554		144	222	303	405	
		A-330	A-384		555		145	224	304	406	
		A-332	A-385		556		147	226	305	407	
		A-333	A-386		557		151	228	314	409	
		A-334	A-387		558		152	229	315	410	
		A-335	A-388		559		153	230	322	411	
		A-336	A-389		560		154	232	324	412	
		A-338	A-390		561		155	233	326	413	
		A-339	A-391		562		156	232	327	414	
		A-340	A-397		563		157	233	329	415	
		A-341	A-402		564		161	234	330	418	
		A-342			565		163	235	331	421	
		A-343			566		167	236	334	422	
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Keathley Canyon (continued)

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Keathley Canyon

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Alaminos Canyon (continued)

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Alaminos Canyon

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Garden Banks (continued)

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Garden Banks (continued)

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(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks: A-375 and A-398.

**13. Lease Terms and Stipulations.**

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

**Stipulation No. 1--Protection of Archaeological Resources.**

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be, or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

**Stipulation No. 2--Protection of Topographic Features.**

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.) The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

**Stipulation No. 3--Military Warning Areas.**

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

**(a) Hold and Save Harmless**

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

Bank Name	No Activity Zone Defined by Isobath (meters)	Bank Name	No Activity Zone Defined by Isobath (meters)
West Flower Garden Bank*	100	Mysterious Bank	74,76,78,80,84 (see leasing map)
East Flower Garden Bank*	100	Coffee Lump	Various (see leasing map)
MacNeil Bank	82	Elackfish Ridge	70
29 Fathom Bank	64	Big Dunn Bar	65
Rankin Bank	85	Small Dunn Bar	65
Geyer Bank	85	32 Fathom Bank	52
Elvers Bank	85	Claypile Bank***	50
Bright Bank*****	85	South Texas Banks*****	
McGrail Bank*****	85	Dream Bank	78,82
Rezak Bank*****	85	Southern Bank	80
Sidner Bank	85	Hospital Bank	70
Parker Bank	85	North Hospital Bank	68
Stetson Bank	62	Aransas Bank	70
Applebaum Bank	85	South Baker Bank	70
		Baker Bank	70

\* Flower Garden Banks--In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.  
 \*\* Low Relief Banks--Only paragraph (a) applies.  
 \*\*\* Claypile Bank--Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of claypile Bank shall be required rather than shunting.  
 \*\*\*\* South Texas Banks--Only paragraphs (a) and (b) apply.  
 \*\*\*\*\* Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.  
 (b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.  
 (c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an

**(b) Electromagnetic Emissions**

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

**(c) Operational**

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters  
Western Planning Area

**Warning Areas**

W-228

**Command Headquarters**  
Chief, Naval Air Training  
Naval Air Station  
ATTN: Lt. Commander Armitage  
or Major Danuser  
Corpus Christi, Texas 78419-5100  
ATTN: N33  
Telephone: (512) 939-3927/3902

W-602

**Command Headquarters**  
Director, Air Space Management  
Deputy Chief of Staff,  
Operations Headquarters  
Strategic Air Command  
ATTN: Major Rose or Mr. Berube  
Offutt AFB, Nebraska 68113-5001  
Telephone: (402) 294-3103/3450  
or Scheduling (402) 294-2334/4649

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**14. Information to Lessees.**

**(a) Supplemental Documents.** For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service (WMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2759.

**(b) Navigation Safety.** Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander William P. Prosser, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589-6901.

**(c) Offshore Pipelines.** Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

**(d) 8-Year Leases.** Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

**(e) Affirmative Action.** Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in

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(h) Archaeological Resources. Bidders are advised that the cultural resource survey requirements are currently being revised for this and future sales to provide new procedures for the protection of archaeological resources, particularly historic period shipwrecks. The "High Probability Zone" has been redefined (see Map 1 as referenced in paragraph 12(b)), and a Notice to Lessees will define new survey requirements within the zone.

(i) Navy Operating Plan. The Navy's operating plan for the Gulf Mexico, which may include relocation of a training carrier and surface combatants to bases in the western Gulf in the vicinity of the Corpus Christi Naval Air Station, is nearing completion. The plan contemplates, that if implemented, permanent structures will need to be sparsely placed within a designated portion of Warning Area W-228.

The MMS will continue to work with the Navy to facilitate multiple use of the area pursuant to the Memorandum of Agreement between the Department of Defense and the Department of the Interior.

15. Codification of Federal Regulations. Bidders should be aware that the revised MMS operating regulations, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR Parts 250 and 256," which were published April 1, 1988, in the Federal Register, have been reproduced in the July 1989 Mineral Resources Volume, "30 CFR Parts 200 to 699."

paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency (EPA) dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) Gulf Ocean Incineration Site. Bidders are advised of the existence of the Gulf Ocean Incineration Site located in the East Breaks, Garden Banks, Alaminos Canyon, and Keathley Canyon leasing areas, as shown on Map 1. This site is presently scheduled to be declassified by the EPA. This site is designated for the incineration of organohalogen wastes including polychlorinated biphenyls and ethylene dichloride. Lessees are advised to contact the EPA, Washington, D.C., office, when formulating plans for undertaking oil and gas activity in the designated incineration site area so that potential conflicts can be mitigated through coordination of activities. The following blocks are affected by the Gulf Ocean Incineration Site:

East Breaks		Garden Banks		Keathley Canyon	
1008	260	1008	480	1-12	353-364
1009	261	1009	481	45-56	397-408
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	305		525	133-144	485-496
	348		568	177-188	529-540
	349		569	221-232	573-584
	392		612	265-276	617-628
	436		656	309-320	
	437		657		

Approved:

*David O'Neal*

Assistant Secretary - Land and Minerals Management

David O'Neal

7-11-90  
Date

[FR Doc. 90-16781 Filed 7-17-90; 8:45 am]  
BILLING CODE 4510-MR-C

*Barry Williamson*  
Director, Minerals Management Service

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

Outer Continental Shelf  
Western Gulf of Mexico

## Notice of Leasing Systems, Sale 125

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and
2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 125, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 125) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system.

[FR Doc. 90-16782 Filed 7-17-90; 8:45 am]

BILLING CODE 4310-MR-C

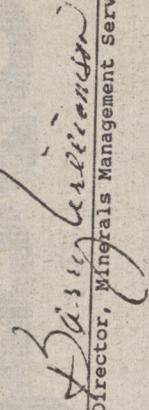
As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

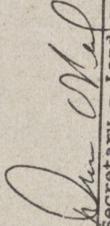
- a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.
- b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 125 - Final. Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Approved:

  
Director, Minerals Management Service

Barry Williamson

  
Assistant Secretary - Land and Minerals Management

David O'Neal

July 13, 1990



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Wednesday  
July 18, 1990



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**Part V**

**The President**

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**Executive Order 12720—President's  
Council on Rural America**

Wednesday  
July 18, 1930

Part V

# The President

Executive Order 12720 - President's  
Council on Rural America

Part V  
The President  
Executive Order 12720 - President's  
Council on Rural America

# Presidential Documents

Title 3—

Executive Order 12720 of July 16, 1990

The President

## President's Council on Rural America

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory council on the rural economic development policy of the United States, it is hereby ordered as follows:

**Section 1. Establishment.** (a) There is established the President's Council on Rural America ("Council"). The Council shall be composed of not more than twenty (20) members to be appointed by the President.

(b) The President shall appoint a Chairman and Vice Chairman from among the members of the Council.

**Sec. 2. Functions.** (a) The Council shall advise the President and the Economic Policy Council on how the Federal Government can improve its rural economic development policy.

(b) In the performance of its advisory duties, the Council shall conduct such continuing reviews and assessments of the Federal Government's rural economic development policy as deemed necessary or appropriate by the Council.

**Sec. 3. Administration.** (a) The heads of executive agencies shall, to the extent permitted by law, provide the Council such information with respect to rural economic development policy matters as the Council deems required for the purpose of carrying out its functions.

(b) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve without any compensation for their work on the Council. However, they shall be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law and subject to the availability of appropriations, the Farmers Home Administration shall provide the Council with administrative services, facilities, staff, and other support services necessary for the performance of its functions. Funds for the operation of the Council shall be provided by the Department of Agriculture.

(d) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Secretary of Agriculture in accordance with guidelines issued by the Administrator of General Services.

(e) The Council shall terminate 2 years from the date of this order unless sooner extended.

THE WHITE HOUSE,

July 16, 1990.

*George H. W. Bush*

[FR Doc. 90-18969

Filed 7-16-90; 4:36 pm]

Billing code 3195-01-M

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Federal Register

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Wednesday, July 18, 1990

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**H.R. 5149/Pub. L. 101-330**

To amend the Child Nutrition Act of 1966 to provide that the Secretary of Agriculture may not consider, in allocating amounts to a State agency under the special supplemental food program for women, infants, and children for the fiscal year 1991, any amounts returned by such agency for reallocation during the fiscal year 1990 and to allow amounts allocated to a State for such program for the fiscal year 1991 to be expended for expenses incurred in the fiscal year 1990. (July 12, 1990; 104 Stat. 311; 1 page) Price: \$1.00

**H.J. Res. 599/Pub. L. 101-331**

To designate July 1, 1990, as "National Ducks and Wetlands Day". (July 13, 1990; 104 Stat. 312; 1 page) Price: \$1.00

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