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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 736

Grain Warehouses—United States Warehouse Act (USWA)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the proposed rule published in the Federal Register on May 9, 1991 (56 FR 21454). The final rule amends and clarifies the regulations governing grain warehousemen, inspectors, and weighers licensed under the USWA. ASCS regulates and implements the USWA. The Federal Grain Inspection Service (FGIS) regulates the U.S. Grain Standards Act (USGSA). The proposal responded to requests to eliminate confusion, and make it clear that the USWA does not create a competitive conflict between USWA licensed inspectors and those licensed by FGIS under the USGSA and employed by independent grain inspection companies.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Agricultural Marketing Specialist, ASCS–USDA, PO. box 2415, room 5962–S, Washington, DC. 20013, telephone (202) 382–8004, FAX (202) 475–5014.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major". It has been determined that these program matters 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, individuals, 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 enterprises to compete with foreign-based enterprises on domestic or export markets.

Keith Bjerke, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (4 U.S.C. 601 et seq.). Consequently, no regulatory flexibility analysis is required.

It has been determined by an environmental evaluation that this action would have no 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 consulting with State and local officials. See the notice related to 7 CFR, part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Inspectors and Weighers Licenses

FGIS regulates and implements the USGSA, and ASCS regulates and implements the USWA.

Under the USGSA, FGIS is responsible for administering a national inspection and weighing system for grain. The USGSA provides standards to serve as a common language for different grain qualities and conditions. The USGSA, with few exceptions, requires ("official") certifications of export grain sold by grade. FGIS ("official") inspection and weighing services are provided for grain remaining in the domestic market upon request.

The USWA provides for quality and quantity determinations to be made on grain stored or to be stored in a USWA licensed warehouse by a USWA licensed grader and/or weigher for the purpose of the warehouse receipt for merchandising. The weight and grade certificates issued under the USWA are not valid for the USGSA even though the standards used are the same.

Recent concern, primarily from individuals licensed by FGIS to perform "official" grading and weighing, caused us to review the USWA regulations covering grain grading and weighing. In order to clarify the scope and intention of the USWA and stress the separation of responsibilities, we issued a proposed rule for comment.

General Summary of Comments

A proposed rule was published in the Federal Register on May 9, 1991. Comments from interested parties were due on or before July 8, 1991. One comment was received. The commentor supported the proposed changes dealing with §§ 736.2(aa), 736.19(c), and 736.107.

The comment as to the removal of § 736.106 was not negative, but was not fully supportive. The commentor suggests that if we remove that section, that we amend section 736.61 which deals with inspectors' and weighers' license applications. Specifically, the commentor suggested we add the following language: "A single application for a license, if approved, will authorize the applicant to inspect and weigh grain at all federally licensed facilities under a single company's ownership, management control or warehouse license. Individuals employed by independent grain inspection agencies are eligible to apply for a license as individuals, and, if approved, will be authorized to inspect and weigh grain at all federally licensed facilities operating under a single company's ownership, management control or warehouse license."

It was determined that this suggestion be implemented, but not by inclusion in the regulations. On July 28, ASCS issued a letter to all grain warehousemen licensed under the USWA announcing the policy as suggested.

Because of our action implementing the new policy suggested by the commentor, the proposed rule is implemented without change.

List of Subjects in 7 CFR Part 736

Administrative practice and procedure, Grains, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 736 is amended as follows:

PART 736—GRAIN WAREHOUSES

1. The authority citation for 7 CFR part 736 continues to read as follows:

Authority: 7 U.S.C. 268.

2. Section 736.2 is amended by adding a new paragraph (aa) to read as follows:

§ 736.2 Terms defined.

* * * * *

(aa) *Storage grain.* All grain received into, stored in, or delivered out of the warehouse which is not classified as nonstorage grain under § 736.19(c) of this part.

3. Section 736.19 is amended by revising paragraph (c) to read as follows:

§ 736.19 Grain must be inspected and weighed.

* * * * *

(c) Except as provided in § 736.27 of this part, all storage grain delivered out of a warehouse must be inspected, graded, and weighed by a licensed inspector or weigher, as applicable.

§§ 736.106, 736.107 [Removed]

4. Sections 736.106 and 736.107 are removed and reserved.

Signed at Washington, DC., on August 7, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91–19253 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV–91–239 FR]

Nectarines and Peaches Grown in California; Amendment of Size, Container Marking, Maturity Requirements and Effective Regulatory Dates: Marketing Order Nos. 916 for Nectarines and 917 for Fresh Pears, Plums and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes size, container marking and maturity requirements for fresh nectarines and peaches grown in California. The rule adds several new varieties of nectarines and peaches to variety-specific size requirements and deletes other nectarine and peach varieties from those requirements. Deleted varieties are subject to the minimum size requirements for non-listed varieties. The rule also clarifies size requirements for nectarines by making minor changes in terminology to standardize the format of the regulations. The rule exempts from certain container marking requirements packages of nectarines and peaches mailed directly to consumers. The rule adds maturity assignments to two new nectarine varieties and four new peach varieties, and revises the footnote of the maturity assignment tables for the two fruits. Additionally, this final rule changes the effective dates for regulating the grade, size, quality, maturity, container and pack of nectarines and peaches to correspond to the beginning and projected ending shipment dates for these commodities for the 1991 and subsequent seasons. These regulations are designed to provide handlers with more marketing flexibility, to more accurately define the size and maturity characteristics of the fruits, and to promote the marketing of the fruits. With the exception of the clarification of nectarine size regulations, the revised effective dates for regulating peaches, and the changes to the footnote to each fruit's maturity assignment table, the changes were unanimously approved by the Nectarine Administrative Committee and the Peach Commodity Committee.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, USDA/AMS/F&V/room 2525-South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3919, or, Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., Suite 102–B, Fresno, California 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and fresh pears, plums and peaches grown in California. The orders are effective under the Agricultural Marketing Agreement Act of 1937 (Act) as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 300 handlers are subject to regulation under the marketing orders for California nectarines and peaches. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $3,500,000. There are about 1,800 growers of these tree fruits in California. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Inspected shipments of California nectarines and peaches for the 1990 season totalled 18,256,000 and 16,063,000 packages, respectively. They were marketed primarily in the fresh market.

The Nectarine Administrative Committee and the Peach Commodity Committee (hereinafter referred to as the nectarine and peach committees) unanimously recommended amending size requirements, amending maturity requirements, adding container marketing requirements and exempting directly mailed consumer packages from certain container marking requirements.

Notice of this action was published as a proposed rule in the **Federal Register** (56 FR 23234, May 21, 1991). One comment was received from Mr. Jonathan Field, manager of the California tree fruit marketing orders, regarding various aspects of the proposed rule. The comment is discussed below.

This rule is based upon the two committees' recommendations, on information submitted by the committees and their respective subcommittees, the comment received and on other available information. Changes in this rulemaking reflect crop and market conditions experienced in 1990 and expected in 1991.

Effective Dates

Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification or suspension, as recommended by the applicable committee and approved by the

Secretary. Currently, the marketing orders' regulations are effective on a yearly basis from January 1 through December 31. This action changes the effective dates for the California nectarine and peach regulations to more closely coincide with their respective marketing seasons. The nectarine committee approved unanimously the dates from April 15 through October 31. While the peach committee did not consider any proposal to change the peach handling regulations' effective dates, the Department proposed establishing the period from April 15 through October 31 as the effective dates of the handling regulations for California peaches under the marketing order.

Mr. Field commented that the nectarine committee recommended effective regulatory dates in response to the recent inclusion of nectarines under section 8e of the Act. That section requires the Department to promulgate, with U.S. Trade Representative concurrence, grade, size, quality, or maturity requirements for that fruit offered for importations similar or comparable to those in effect under Federal marketing orders. He suggested that the effective dates of April 15 through October 31 should be applied only to imported nectarines and not to domestically produced nectarines. However, section 8e specifies that the effective regulatory period for an imported commodity must be the same as the regulatory period for the domestically produced commodity. Thus, it is necessary to establish specific periods of regulation for domestically produced California nectarines which correspond with the domestic shipping season to ensure that regulations on imported nectarines are only applied during that period.

Mr. Field also suggested that the current effective dates for peaches (January 1 through December 31) should not be changed because peaches were not added to section 8e of the Act. However, the Department has determined that it is reasonable to establish effective regulatory dates which closely coincide with actual production and shipping periods. Thus, both of Mr. Field's comments regarding the effective regulatory dates of these two orders are denied.

Mr. Field also advised that the 1991 shipping period for peaches is expected to extend later than October 31, as contained in the proposed rule (56 FR 23235). Based on 1990 packout reports for peaches, this final rule extends the effective regulatory dates for peaches an additional three weeks from that recommended in the proposed rule. Thus, the effective regulatory period for California peaches shall be April 15 through November 23 of each year. This action extends the regulatory period to cover shipments of fruit which may be delayed a few weeks following the final packout.

Size Requirements

This final rule alters size requirements for nectarines and peaches by adding several new varieties now produced in commercially significant quantities to variety-specific (named variety) size requirements. Nectarine and peach varieties no longer produced in significant quantities are deleted from variety-specific size requirements. Size requirements for varieties not mentioned in this rule are not changed for the 1991 season.

Variety-specific size requirements are proposed when a variety is first produced in commercially significant quantities. Such quantity is considered by the two committees to be total shipments of a variety exceeding 10,000 packages during a season. In making this volume determination, individual consumer packages weighing 15 pounds net weight or less are converted to 25-pound equivalent packages. For instance, two individual nectarine consumer packages of 11 pounds and 14 pounds would be counted as one 25-pound package of the fruit.

Nectarine and peach varieties that exceeded 10,000 shipped packages for the first time during the 1990 seasons are included in this rulemaking and are now regulated under variety-specific size requirements for each fruit.

Nectarine and peach varieties no longer produced in significant quantities—which the committees have determined to be less than 5,000 packages during a season—are removed from the variety-specific size requirement list. The varieties listed in this rulemaking which are removed from variety-specific size requirement lists for the 1991 season were not produced, during 1990, in quantities significant enough to warrant variety-specific size coverage. However, these varieties are subject to minimum size requirements for non-listed varieties because, in combination with other varieties of the fruit, they are produced in quantities significant enough to warrant some size coverage. The size requirements established for non-listed varieties are generally less restrictive than those established for listed varieties, but help provide retailers and consumers with the fruit they prefer. The 10,000 and 5,000 package quantities used in making these determinations have been used in prior seasons.

For nectarines, the variety-specific size requirements and non-listed variety size requirements are specified in paragraphs (a)(2) through (a)(8) of § 916.356, as amended on June 15, 1990 (55 FR 24215) and as further amended May 8, 1991 (56 FR 22107, May 14, 1991). To implement the nectarine committee's unanimous recommendations, paragraph (a)(5)(i) of § 916.356 is amended to establish variety-specific size requirements for five nectarines varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1990 season. These varieties are Alta Red, Del Rio Rey, Mid Glo, Super Red and Zee Glo.

The nectarine committee also unanimously recommended that four varieties be deleted from variety-specific size requirement because their production was less than 5,000 packages during the 1990 season. Thus, the Late Tina Red, Mayfair, Nect–5 and 32–79–22 nectarine varieties are removed from the nectarine variety-specific list and are subject to the non-listed variety size requirements specified in paragraphs (a)(6) through (a)(8) of § 916.356. Also, subparagraphs (ii) of these paragraphs are amended by changing the words "in any container" to "other than as specified in paragraph (ii) (respectively) of this section." This change clarifies that different sizing tests should be applied to different containers of the inspected nectarines.

For peaches, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(6) and in paragraphs (b) and (c) of § 917.459, as amended on June 15, 1990 (55 FR 24215). The peach committee unanimously recommended that variety-specific size requirements be established for three peach varieties. Paragraph (a)(5) of § 917.459 is amended to include the new varieties Rich Lady and Sierra Lady and paragraph (a)(6) is amended to include the new variety Topcrest.

The peach committee also unanimously recommended that three varieties be deleted from variety-specific size requirements because the production of these varieties was less than 5,000 packages during the 1990 season. Thus, the Jefferson Sun, June Crest and Prima Fire varieties are removed from the peach variety-specific list and are subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

Finally, clarifying changes are made in subdivisions (i) and (ii) of paragraphs

(a) (2), (3), (4), (5), (6), (7) and (8) of § 916.356. The terminology is modeled after the format currently used in the peach grade and size regulations.

The addition of several new varieties of nectarines and peaches to the variety-specific size requirements, the removal of certain other varieties from those requirements, and the change in the effective dates for the application of requirements are not detrimental to small entities. These changes will help the two commodity industries to provide the sizes of fresh fruit desired by consumers.

Container Marking Requirements

Table I of § 916.350(a)(3)(iv) and Table I of § 917.442(a)(3)(iv), as published in the **Federal Register** (55 FR 24221, June 15, 1990), specify that the size designations of nectarines and peaches, loose-filled or tight-filled, in any containers shall be marked according to the number of fruit when packed, in accordance with standard pack requirements, in molded forms (tray-packs) in No. 22D standard lug boxes. The two tables listed a range in the number of fruit for each size category when so packed.

Based on the experience of the 1990 season, the peach committee unanimously recommended that the peach table listing the tray-pack sizes be revised for 64, 50 and 48 size peaches to more accurately indicate the maximum number of the fruit in the sample. This rule reduces by one the maximum number of size 64 peaches in a 16-pound sample from 54 to 53 peaches. This rule also increases the maximum number of size 50 and size 48 peaches in 16-pound samples by one to 39 peaches and 35 peaches, respectively.

Mr. Field commented that a "range" in the number of nectarines and peaches for each tray pack size designation, as currently listed in the regulatory language, is incorrect. He stated that the tables are meant to show the maximum number of peaches, by size, in a 16-pound sample, and recommended that the numbers designating the low end of the range for each size of the fruit be removed from both the nectarine and peach tables. This recommendation is accepted to make the two tables consistent with industry practice. Thus, the lower number for each peach tray pack size category is removed from Column B of Table I of § 917.442(a)(3)(iv) as proposed (56 FR 23239, May 21, 1991), leaving only the maximum number of peaches for each tray pack size category listed under Column A. Likewise, this final rule revises Table I of § 916.350(a)(3)(iv) as published in the **Federal Register** (55 FR 25221, June 15, 1990) accordingly, by removing the lower number for each nectarine tray pack size category from Column B, leaving only the maximum number of nectarines for each tray pack size category listed under Column A.

To be consistent, the introductory text and title of each table is also revised to indicate the maximum number of nectarines and peaches (respectively) for each tray pack size designation. The texts of §§ 916.350(a)(3)(iv) and 917.442(a)(3)(iv), are revised to read as follows: "The size of nectarines (peaches), when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table which specifies the tray-pack size designation in Column A with the corresponding maximum number of nectarines (peaches) in a 16-pound sample of each size of the fruit in Column B:"

This change in the respective introductory texts also corrects the current text as published in § 917.442(a)(3)(iv), (55 FR 24221, June 15, 1990). That text inadvertently identified Column A as showing the number of peaches and Column B as showing the tray pack size designation, which is not the case.

Also, to be consistent with the change in the text, the heading of Column B of each table listed in §§ 916.350(a)(3)(iv) and 917.442(a)(3)(iv), are revised to read as follows: "Column B: Maximum number of nectarines (peaches) in 16-pound sample."

The nectarine and peach committees also reviewed a request by one handler that direct mail consumer packages/gift boxes (hereinafter referred to as gift packs) be exempt from certain container marking requirements. The handler supports mandatory inspection under the program, but believes the container marking requirements impose an unnecessary burden on the marketing of direct mail consumer packages and gift boxes. Gift packs mailed directly to consumers are carefully designed to encourage consumer acceptance and increase purchases. The handler contends that the Federal-State lot stamp, varietal name and size count markings, required under the program, detract from the aesthetically pleasing appearance of the gift packs and interferes with the promotional program of the gift pack shipper. Because these gift packs are smaller, less space is available for the markings. As a result, gift packs appear cluttered when all of the required markings appear on the gift packs.

The handler also contends that the marking requirements are unnecessary and burdensome for the gift pack shipper to meet. The handler contends that lot stamp numbering is required to keep track of the commodity which may change ownership several times in regular trade channels. At any point in the course of shipment a question regarding the quality or condition of the fruit may arise, and the lot stamp number on the package allows the prospective buyer to verify the quality of the fruit. However, gift packs are mailed directly to consumers and are not intended for resale. Therefore, consumers can contact the shipper directly if the consumer is not satisfied with the gift pack. In addition, most consumers are not knowledgeable about the lot stamp numbering system, and of how the numbers may be used to obtain additional information about the shipment of the commodity. Therefore, deletion of the lot stamp on gift packs will not affect the purchasers of this fruit.

Likewise, the handler also requested that the gift packs be exempt from the varietal name and size count marking requirements, because the requirements are burdensome for the packinghouses to meet. The handler explained that each year a gift pack shipper contracts with a number of different packing houses to pack fruit under contract. Packing houses may pack different varieties and size counts of fruit at different times during the harvest season. Because container markings must be stamped at the time of packing, the imposition of such markings on individual gift boxes results in an additional expense for packing houses.

After deliberation, the nectarine and peach committees unanimously recommended that gift packs be exempt from inspection lot stamp, varietal name and size count marking requirements. Committee members concluded that the nectarine and peach quality assurance programs would not be affected by the marking exemptions because the direct sales market is distinct from regular market channels.

Therefore, to relieve gift pack handlers of unnecessary container marking requirements and to enhance the marketing opportunity for gift pack shippers, this rule exempts direct mail consumer gift packs from certain marking requirements by revising §§ 916.115 and 917.150 and paragraphs (a) of §§ 916.350 and 917.442.

The revision of weight equivalents for three sizes of peaches utilizing tray-pack designations and the exemption of certain container marking requirements for gift packs will increase efficiency of handling the fruit in the marketplace and improve the marketing of the fruit.

These changes will not result in additional marketing costs to the industries.

Maturity Requirements

The maturity requirements established under these marketing orders are intended to provide fruit that better meets customer preferences. Over the years, consumers have indicated that they prefer fruit that is sweet and flavorful. To help ensure that fruit reaching the marketplace is well-matured, the maturity subcommittees of the nectarine and peach committees and the inspection service inspectors meet after each harvest season. They review the designated maturity guides established for different varieties against the surface color of the varieties observed during the season. Other tests used during the previous season to determine well-maturity are also reviewed. Appropriate changes in maturity guides for the following season are recommended to the respective committees. The determination of which color chip will apply to each variety is based upon careful analysis, usually over several seasons, by the inspection service and the maturity subcommittees.

In certain instances, a color chip designation for any particular nectarine and peach variety may be changed during the course of a season through the maturity variance process. Then it must be determined which chip to use in the new season. This year the nectarine and peach committees recommended that the maturity assignments for their respective fruit varieties, in place at the beginning of the 1990 season, be carried over to the 1991 season, except that the determination of the well-matured standard for the Babcock variety peach be made at the discretion of the inspection supervisor.

This rule also assigns maturity guides to new varieties for which guides have not been previously specified. On the basis of inspection service advice, the nectarine committee unanimously recommended that the following two nectarine varieties and color chip maturity guides be added to Table I in paragraph (a) of § 916.356: Summer Star-G Color and Tasty Gold-H Color. Also, on the basis of inspection service advice, the peach committee unanimously recommended that the following four varieties and color chip maturity guides be added to Table I in paragraph (a) of § 917.459: Amber Crest-G Color, June Sun-H Color, 50-178-G Color, and Snow Flame-Supervisor discretion.

Finally, additional information to help handlers verify changes in the nectarine and peach maturity requirements is added to the nectarine and peach maturity guides. The information includes a revised "NOTE:" offering advice for obtaining color standards or other maturity requirements applicable to any varieties not included in the table of maturity requirements. Table I of each commodity's "Subpart—Grade and Size Regulation" (§ 916.356(a)(1) for nectarines and § 917.459(a)(6) for peaches) include the explanation.

The Department proposed the revised explanation for industry comment. Mr. Field commented that the revised language appears to be an improvement in the regulations. Thus, this rule changes the wording of the notes to assist growers and handlers in determining the well-maturity of nectarines and peaches to read as follows: "NOTE: Consult with the Federal or Federal-State Inspection Service Supervisor for the color standard applicable to varieties not listed above. Maturity determinations are to be made at time of picking. Consultation of the Inspection Supervisor regarding the established color standard is therefore advised prior to commencing harvest of any variety. Regular confirmation of the requirements in effect also is recommended."

The actions assigning maturity guides to new varieties of the two fruits, the continuance of 1991 of 1990 maturity guides with a change for one peach variety, and the changes in the explanatory note following the maturity assignment tables will improve the quality of the fruit marketed and will not be detrimental to small entities in the two industries.

After consideration of all relevant material presented, the information and recommendations submitted by the nectarine and peach committees, the comment submitted, and other available information, it is found that this action will tend to affectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that the above changes will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The requirements set forth below are substantially similar to those published as a proposed rule on May 22, 1991; (2) the shipping season has already begun and the rules issued herein should be applied to the industry for as much of the season as possible; and (3) no useful propose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Parts 916 and 917

California, Marketing agreements and orders, Nectarines, Plums, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows: (These actions will be published in the Code of Federal Regulations.)

1. The authority citation for 7 CFR parts 916 and 917 continues to read a follows:

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

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.115 is revised to read as follows:

§ 916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or mailed directly to consumers in consumer packages, containers of nectarines shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such nectarines have been inspected in accordance with § 916.55.

3. The introductory text of paragraph (a) and paragraphs (a) (2) and (3) of § 916.350 are revised to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) During the period beginning April 15 and ending October 31, no handler shall ship any package or container of any variety of nectarines except in accordance with the following terms and conditions:

* * * * *

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the word "nectarines" and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of nectarines, except consumer packages mailed directly to consumers, shall bear, on one outside end in plain sight and in plain letters, the following count and/or size description of the nectarines as applicable.

* * * * *

§ 916.350 [Amended]

4. The introductory text of § 916.350 (a)(3)(iv) and Table I is revised to read as follows:

(a) * * *

(3) * * *

(iv) The size of nectarines, when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table which specifies the tray-pack size designation in Column A with the corresponding maximum number of nectarines in a 16-pound sample of each size of the fruit in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A tray pack size designation	Column B maximum number of nectarines in 16-lb sample
108	92
96	87
88	78
84	75
80	67
72	61
70	56
64	51
60	46
56	43
54	39
50	36
48	33
42	28
40	26
36	25

* * * * *

5. The introductory text of paragraph (a) of § 916.356 is revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) During the period beginning April 15 and ending October 31, no handler shall ship:

* * * * *

§ 916.356 [Amended]

6. Table I of paragraph (a)(1)(i) of § 916.356 is amended by adding in alphabetical order the following nectarine varieties to Column A and their corresponding maturity guides to Column B.

(a) * * *

(1) * * *

(i) * * *

Summer Star.....G

* * * * *

Tasty Gold.....H

* * * * *

§ 916.356 [Amended]

7. The explanatory note following Table I of paragraph (a)(1)(i) of § 916.356 is revised to read as follows:

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the color standard applicable to varieties not listed above. Maturity determinations are to be made at time of picking. Consultation of the Inspection Supervisor regarding the established color standard is therefore advised prior to commencing harvest of any variety. Regular confirmation of the requirements in effect also is recommended.

§ 916.356 [Amended]

8. Paragraph (a)(3) of § 916.356 is amended by removing the nectarine variety Mayfair.

§ 916.356 [Amended]

9. Paragraph (a)(2)(i) of § 916.356 is revised to read as follows:

(a) * * *

(2) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box; or

* * * * *

§ 916.356 [Amended]

10. Paragraphs (a)(3)(i) and (a)(3)(ii) of § 916.356 are revised to read as follows:

(a) * * *

(3) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

* * * * *

§ 916.356 [Amended]

11. Paragraphs (a)(4)(i) and (a)(4)(ii) of § 916.356 are revised to read as follows:

(a) * * *

(4) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

* * * * *

§ 916.356 [Amended]

12. Paragraph (a)(5) of § 916.356 is amended by adding in alphabetical order the nectarine varieties Alta Red, Del Rio Rey, Mid Glo, Super Red and Zee Glo and by removing the nectarine varieties Late Tina Red, Nect-5 and 32–79–22.

§ 916.356 [Amended]

13. Paragraphs (a)(5)(i) and (a)(5)(ii) of § 916.356 are revised to read as follows:

(a) * * *

(5) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

* * * * *

14. The introductory text of paragraph (a)(6) of § 916.356 is revised to read as follows:

(a) * * *

(6) During April 15 through May 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

* * * * *

§ 916.356 [Amended]

15. Paragraphs (a)(6)(i) and (a)(6)(ii) of § 916.356 are revised to read as follows:

(a) * * *

(6) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

* * * * *

§ 916.356 [Amended]

16. Paragraphs (a)(7)(i) and (a)(7)(ii) of § 916.356 are revised to read as follows:

(a) * * *

(7) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

* * * * *

§ 916.356 [Amended]

17. The introductory text of paragraph (a)(8) of § 916.356 is revised to read as follows:

(a) * * *

(8) During July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

* * * * *

§ 916.356 [Amended]

18. Paragraphs (a)(8)(i) and (a)(8)(ii) of § 916.356 are revised to read as follows:

(a) * * *

(8) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

19. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, containers of fruit shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been inspected in accordance with § 917.45.

20. The introductory text of paragraph (a) and paragraph (a) (2) and (3) of § 917.442 are revised to read as follows:

§ 917.442 Peach Regulation 8.

(a) During the period beginning April 15 and ending November 23, no handler shall ship any package or container of any variety of peaches except in accordance with the following terms and conditions:

* * * * *

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters, the word "peaches" and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of peaches, except consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters, the following count and/or size description of the peaches as applicable:

* * * * *

§ 917.442 [Amended]

21. Paragraph (a)(3)(iv) in § 917.442 is revised to read as follows:

(a) * * *

(3) * * *

(iv) The size of peaches, when packed in loose-filled or tight filled containers, shall be marked in accordance with the following table which specifies the tray-pack size designation in Column A with the corresponding maximum number of peaches in a 16-pound sample of each size of the fruit in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A tray pack size designation	Column B maximum number of peaches in 16-lb sample
96	96
88	83
84	79
80	73
72	64
70	59
64	53
60	46
56	45
54	43
50	39
48	35
42	30
40	26
36	25

* * * * *

22. The introductory text of paragraph (a) of § 917.459 is revised to read as follows:

§ 917.459 Peach Regulation 14.

(a) During the period beginning April 15 and ending November 23, no handler shall ship:

* * * * *

§ 917.459 [Amended]

23. Paragraph (a)(4) of § 917.459 is amended by removing the peach varieties June Crest and Prima Fire.

§ 917.459 [Amended]

24. Paragraph (a)(5) of § 917.459 is amended by adding in alphabetical order the peach varieties Rich lady and Sierra Lady and by removing the peach variety Jefferson Sun.

§ 917.459 [Amended]

25. Paragraph (a)(6) of § 917.459 is amended by adding in alphabetical order the peach variety Topcrest.

§ 917.459 [Amended]

26. Table I of paragraph (a) of § 917.459 is amended by adding in alphabetical order the following varieties of peaches to Column A and corresponding maturity guides to Column B:

* * * * *

Ambercrest.....G

* * * * *

June Sun.....H

* * * * *

Snow Flame.....Supervisor Discretion

* * * * *

50–178.....G

* * * * *

§ 917.459 [Amended]

27. Table I of paragraph (a) of § 917.459 is amended by removing the maturity guide from column B of the following peach variety under Column A and inserting the revised maturity guide for that variety in Column B:

Babcock Type.....Supervisor discretion

§ 917.459 [Amended]

28. The explanatory note following Table I of paragraph (a) of § 917.459 is revised to read as follows:

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the color standard applicable to varieties not listed above. Maturity determinations are to be made at time of picking. Consultation of the Inspection Supervisor regarding the established color standard is therefore advised prior to commencing harvest of any variety. Regular confirmation of the requirements in effect also is recommended.

§ 917.459 [Amended]

29. The introductory text of paragraph (b) of § 917.459 is amended to read as follows:

* * * * *

(b) During the period April 15 through July 2 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a) (2), (3) (4) or (5) of this section unless:

* * * * *

Dated: August 9, 1991.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 91-19363 Filed 8-13-91; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 1207

[AMS-FV-91-235]

RIN 0581-AA47

Potato Research and Promotion Plan; Amendments to the Plan, Rules and Regulations Issued Thereunder, Procedure for the Conduct of Referenda, and Order Directing That a Referendum be Conducted.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Potato Research and Promotion Plan (Plan), the Rules and Regulations issued thereunder, and the Procedure for the Conduct of Referenda in accordance with amendments made to the Potato Research and Promotion Act by the Food, Agriculture, Conservation, and Trade Act of 1990. The amendments to the Plan include: (1) Levying an assessment on imported potatoes, potato products, and seed potatoes equal to that levied on domestic production and subjecting importers to the terms and conditions of the Plan; and (2) eliminating the provision of the Plan which permits refunds of assessments. In addition, conforming amendments are made to the Rules and Regulations issued under the Plan and the Procedure for the Conduct of Referenda and all 50 States are included under the Plan. This action also directs that a referendum be conducted from August 19 to September 6, 1991, to determine if producers and importers favor continuance of these amendments.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur L. Pease, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-So., P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3915.

SUPPLEMENTARY INFORMATION: These amendment to the Potato Research and Promotion Plan, hereinafter referred to as the Plan, are issued pursuant to the Potato Research and Promotion Act, as amended on November 28, 1990 [84 Stat. 2041, 104 Stat. 3865, 7 U.S.C. 2611 *et seq.*], hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are an estimated 2,000 handlers and 6,000 producers who are subject to the provisions of the Plan currently in effect. Further, there are approximately 80 importers of potatoes and potato products for human consumption and approximately 25 importers of seed potatoes who will become subject to this amended Plan. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of potato handlers and producers may be classified as small entities.

The reporting burden on importers, if submission of reports becomes necessary, will require approximately 6 hours per year for each importer of potatoes and potato products for human consumption and for each importer of seed potatoes.

The changes to the Plan, rules and regulations, and procedure for conduct of referenda are a result of amendments to the Act. The economic impact of these changes on importers, which are described herein, is not expected to be significant. The assessment to be levied on imports of potatoes, potato products for human consumption, and seed potatoes is the same as that imposed on domestic producers, currently 2 cents per hundredweight or equivalent for potato products. It is expected that the benefits resulting from the promotion and advertising of potatoes and potato products should far outweigh any costs associated with the Plan. The changes will also authorize reporting requirements and impose recordkeeping requirements on importers. However, the economic impact of these requirements is not expected to be significant in that normal business records can be used for completing any authorized reports, and the recordkeeping requirements are consistent with normal business practices. The amendments also eliminate refunds of assessments. Currently, approximately 95 percent of producers do not seek refunds, and such refunds amount to only 18 percent of the total assessments collected. Assessment income for fiscal year 1990 was $6,072,669. The increase in funds to the National Potato Promotion Board (Board) from assessments on imports is estimated at $160,000, less than 3 percent of the total projected assessments collected. The research and promotion program is expected to benefit producers, handlers, and importers alike by expanding and maintaining new and existing markets.

In accordance with the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations (5 CFR part 1320), the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control number 0581-0093 and 0505-0001. These OMB control numbers expire March 31, 1994. The Plan, as amended herein, will authorize the Board to collect assessments on potatoes, potato products for human consumption, and seed potatoes imported into the United States from foreign counties. Importers of such potatoes, potato products, and seed potatoes will be required to submit such reports to the Board as it deems necessary to administer the provisions of the Plan. However, no immediate reporting requirements by importers are contemplated at this time since the Board plans to have the United States Customs Service (Customs Service) of the Department of the Treasury collect assessments on imported potatoes, potato products, and seed potatoes. Importers will be required to maintain records, and such records will be subject to inspection. Records will be required to be maintained for 2 years beyond the first period of their applicability.

It is estimated that approximately 105 importers will be subject to these requirements. Because the Board contemplates levying the assessment at the time of importation, or withdrawal,

for consumption into the United States, there would be no added reporting requirements on importers. Importers nominated for membership on the Board will complete a membership background information sheet. The estimated number of respondents completing this form will be, at most, five nominees with an estimated reporting burden of 0.5 hours per response. The membership background information sheet has been approved under OMB control number 0505–0001.

In addition to importers, handlers in the States of Alaska and Hawaii will be required to submit the same reports as those handlers located in the 48 contiguous United States. It is estimated there are approximately six handlers in Alaska and Hawaii, and the added maximum burden will be about 0.33 hours for each handler per month or 3.0 hours per year.

The Act, as amended, changes the definition of potatoes to include potatoes produced in foreign countries and imported into the United States, and makes imported potato products and imported seed potatoes subject to assessments. Currently, there is no provision in the Plan for levying assessments on imported potatoes, potato products, or seed potatoes. The Act, as amended, provides authority for such a provision, but the continuance of the provision is contingent on approval by potato producers and importers in a referendum to be conducted within 24 months of issuance of this amended Plan. Thus, the Plan is amended to include assessments on potatoes, potato products, and seed potatoes produced in foreign countries and imported into the United States. Further, the amended Act requires the inclusion, under any Plan, of potatoes produced in the States of Alaska and Hawaii. Thus, the Plan is also amended to include potatoes produced in the States of Alaska and Hawaii.

To facilitate collection of the assessments on imported potatoes and potato products, and seed potatoes, the Board recommended and the Secretary of Agriculture (Secretary) proposed that the Customs Service be designated as the collecting agency for assessments levied on such imports. Since all imported potatoes, potato products, and seed potatoes are imported into the United States under the supervision and control of the Customs Service, this is an appropriate and efficient method to collect the Board's assessment. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collect these potato assessments. An agreement between the Department and the Customs Service will be entered into to implement this action.

The Act, as amended, requires importer representation on the Board, if importers are subject to a plan. Up to five representatives of importers, appointed by the Secretary, are authorized to serve as importer members on the Board. At the current time, two importer positions will be added to the Board. This determination is based on the same criteria as that used to determine the number of producer positions on the Board (i.e., one position per 5,000,000 hundredweight, or major portion thereof, of potatoes). There shall be one importer member for each 5 million hundredweight, or major portion thereof, of potatoes, potato product equivalents, and seed potatoes imported into the United States. Based on data for the past 2 years from the Bureau of the Census, U.S. Department of Commerce, imports of fresh and seed potatoes were approximately 6,000,000 hundredweight per year. Although the formula for converting processed potatoes to fresh weight equivalents has not been formally established, a relatively small quantity of processed potato products (approximately 1,000,000 hundredweight) is imported annually. Therefore, the initial allocation of two importer positions on the Board should be well within the criteria used to determine producer representation. This representation will enable importers to participate in developing the Board's programs, plans and projects, and express their views and concerns on how Board funds are used. To obtain nominees for the importer member positions on the Board, importer associations or organizations will be requested by the Board to furnish eligible nominees.

The Act, as amended, also authorizes the elimination of assessment refunds. Therefore, the refund provisions in the Plan and the rules and regulations are eliminated.

During the period beginning on the effective date of the amended Plan and ending on the date of the announcement of the results of the continuance referendum on the amendments to the Plan, the Act requires the establishment of an escrow account equal to 10 percent of the Board's proceeds from assessments collected from both domestic producers and importers. If producers and importers approve the continuation of the amendments, then the escrow funds become part of the Board's general fund.

However, if producers and importers voting in the referendum do not approve the continuation of the amendments, then the escrow funds will be used to pay producers and importers who request a refund of their assessments paid. Such requests for refunds shall be submitted to the Board during a 90-day period which begins 90 days after publication of the results of the referendum. If the requests for refunds exceed the amount in the escrow account, then the funds will be prorated among those requesting a refund. Appropriate amendments have been made to implement the escrow account and the refund provisions of the Act.

The Act, as amended, changes the voting requirements in all referenda by authorizing importers to vote in any referendum when importers are subject to the terms and conditions of the Plan. Producers and importers voting in referenda vote on the basis of one person or entity having one vote. The recent amendments to the Act eliminate any consideration of production or importation volumes with regard to voter approval in referenda, with the exception of referenda concerning suspension or termination of the Plan. Amendments have been made to the Plan and Rules and Regulations to reflect these changes in the Act.

Notice of this action was published in the **Federal Register** on June 21, 1991 (56 FR 28503). Written comments were invited from interested persons until July 22, 1991. Two comments on the proposed rule were received, one from the Canadian Horticultural Council (Council) and one from the Canadian Embassy (Embassy).

The Council asked whether the exemption from assessment for U.S. potato producers of 5 acres or less is being extended to foreign producers. The Act [Sec. 1941(h)] provides the authority to assess imports of tablestock, frozen or processed potatoes for ultimate consumption by humans and seed potatoes. No authority is provided in the Act to exempt foreign potato producers of 5 acres or less from assessment. Therefore, all potatoes, potato products, and seed potatoes imported into the United States would be subject to assessments under the Plan.

The Council also asked whether the assessment collected on imported potatoes and potato products would be used only to promote imported potatoes and potato products. The Plan provides that all funds collected by the Board must be used to promote potatoes in

such a fashion as not to favor any potato type, brand, or locality. The purpose of the promotion is to strengthen potatoes' competitive position, and to expand and maintain markets for potatoes and potato products. Therefore, potatoes from both domestic and imported sources should accrue similar benefit from the Plan's promotion program.

Both the Council and the Embassy asked what process will be followed to prepare a formula to convert processed potato products to fresh potato equivalents for the purpose of levying assessments on imported processed potato products. The Plan provides that the Board shall recommend a formula to the Department to convert imported frozen or processed potato products to fresh hundredweight equivalents for assessment purposes. The Department will promulgate a conversion formula following publication in the **Federal Register** of a proposed formula. All interested parties will have an opportunity to comment on the proposed formula before the Department makes a final decision on the conversion formula.

Based on the above, the Administrator has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, it is found that this regulation, as set forth herein, tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule amends the Plan and the Rules and Regulations issued thereunder, in accordance with the provisions of the Act as amended by the Food, Agriculture, Conservation, and Trade Act of 1990; (2) the referendum to determine whether to continue the amendments is scheduled to begin on August 19, 1991; and (3) no useful purpose will be served in delaying the effective date until 30 days after publication of this final rule. Therefore, this final rule is effective on the date of publication in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted among domestic producers and importers of potatoes, potato products, and seed potatoes to determine whether producers and importers favor continuing the accompanying amendments to the Potato Research and Promotion Plan, 7 CFR part 1207. The representative period for establishing voter eligibility for this continuance referendum shall be from January 1 to December 31, 1990. The referendum shall be conducted from August 19 through September 6, 1991.

The Act mandates that the Secretary shall conduct a referendum within 24 months of the effective date of the amended Plan. The amendments to the Plan which are subject to the continuance vote by producers and importers in the referendum: (1) Levy an assessment on imported potatoes, potato products, and seed potatoes equal to that levied on domestic production, and provide for importer representatives on the National Potato Promotion Board (Board); and (2) eliminate the provision of the Plan which permits producers and importers to request refunds of assessments. The Act specifies that a majority of the producers and importers voting in the referendum must favor such amendments for the amendments to be continued.

The Act further mandates that if such amendments to the Plan are not approved by a majority of the producers and importers voting in the referendum, the Secretary shall terminate such amendments and the Plan shall continue in effect without those amendments.

Arthur L. Pease and Georgia C. Abraham, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection With Potato Research and Promotion Plan, as amended, 7 CFR Part 1207.200–1207.207, shall be used to conduct this referendum.

Ballots to be cast in the referendum will be mailed to all known eligible producers and importers. Ballots will also be available from the referendum agents and from local County Extension Service offices in major potato producing and importing areas.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter XI of title 7, part 1207 is amended to read as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1207 is revised to read as follows:

Authority: 7 U.S.C. 2611 *et seq.*

2. Section 1207.200 is revised to read as follows:

§ 1207.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a potato research and promotion plan, or the continuance, termination, or suspension of such a plan, is approved or favored by producers and importers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

3. Section 1207.201 is amended by revising paragraph (a) and by adding paragraph (i) to read as follows:

§ 1207.201 Definitions.

(a) *Act* means the Potato Research and Promotion Act, *Title III of Pub. L. 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041,* as amended.

* * * * *

(i) *Importer* means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

4. Section 1207.202 is amended by revising paragraph (a), the first two sentences of paragraph (b), and paragraph (c) to read as follows:

§ 1207.202 Voting.

(a) Each person who is a producer or importer, as defined in this subpart, at the time of any referendum and who also was a producer or importer during the representative period, shall be entitled to only one vote in the referendum, except that in a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in any referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or importer, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, importer, or estate. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the producer or importer, or an administrator, executor, or trustee of a producing estate, and that such person has the authority to take such action. * * *

(c) Each producer or importer shall be entitled to cast only one ballot in the referendum.

5. Section 1207.203 is amended by adding a colon at the end of the word "ascertaining" in the introductory text of paragraph (c), revising paragraphs (b),

(c) (2) and (3), adding a new paragraph (c)(4), and revising paragraphs (e) and (f) to read as follows:

§ 1207.203 Instructions.

* * * * *

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) * * *

(2) for producers, the acreage of potatoes produced by the voting producer during the representative period.

(3) for producers, the total volume in hundredweight of potatoes produced during the representative period, and

(4) for importers, the total quantity of potatoes or equivalent potato products imported during the representative period.

* * * * *

(e) Make available to producers and importers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of a plan, a summary of the terms and conditions of the Plan: *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer and importer whose name and address is known to the referendum agent.

* * * * *

6. Section 1207.204 is amended by revising paragraph (c) to read as follows:

§ 1207.204 Subagents.

* * * * *

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

* * * * *

7. Section 1207.302 is revised to read as follows:

§ 1207.302 Act.

Act means the Potato Research and Promotion Act, *Title III of Public Law 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041,* as amended.

8. Section 1207.306 is revised to read as follows:

§ 1207.306 Potatoes.

Potatoes means any or all varieties of Irish potatoes grown by producers in the 50 states of the United States and grown in foreign countries and imported into the United States.

9. Sections 1207.312 and 1207.313 are added to read as follows:

§ 1207.312 Importer.

Importer means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

§ 1207.313 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

10. Section 1207.320 is amended by revising paragraph (a), redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively, adding a new paragraph (c), revising newly redesignated paragraph (d) and paragraph (f) to read as follows:

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the "Board", composed of producers, importers, and a public member appointed by the Secretary. Producer members shall be appointed from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322. Importer members shall be appointed from nominations submitted by importers pursuant to § 1207.322. The public member shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary, and shall be appointed by the Secretary.

* * * * *

(c) The number of importer member positions on the Board shall be based on the hundredweights of potatoes, potato products equivalent to fresh potatoes, and seed potatoes imported into the United States but shall not exceed five importer members. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, there shall be one importer member position for each 5 million hundredweight, or major fraction thereof, of potatoes, potato product equivalents, and seed potatoes imported into the United States.

(d) Any State in which the potato producers fail to respond to an officially called nomination meeting may be combined with an adjacent State for the purpose of representation on the Board, in which case the Board's producer member selected by the Secretary will represent both States, but such member's voting power under § 1207.325 shall not be increased.

* * * * *

(f) Should the Board fail to nominate a public member, the Secretary may appoint such member.

11. Section 1207.321 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1207.321 Term of office.

* * * * *

(b) The terms of office of the Board's producer members shall be so determined that approximately one-third of the terms will expire each year. Importer and public member terms shall run concurrently. All members serving on the Board on the effective date of this amendment to the Plan shall continue serving the term to which they were appointed.

* * * * *

(d) No member shall serve for more than two full successive terms of office.

12. Section 1207.322 is amended by revising the section heading, revising the introductory text to the section, redesignating current paragraph (d) as paragraph (e), adding a new paragraph (d), and revising the first sentence of newly designated paragraph (e) to read as follows:

§ 1207.322 Nominations and appointment.

The Secretary shall select the producer, importer, and public members of the Board from nominations which may be made in the following manner.

* * * * *

(d) The importer members shall be nominated by importers of potatoes, potato products and/or seed potatoes. The number of importer members on the Board shall be announced by the Secretary and shall not exceed five members. The Board may call upon organizations of potato, potato products and/or seed potato importers to assist in nominating importers for membership on the Board. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association;

(2) What percentage of the total number of importers is represented by the association;

(3) Is the association representative of the potato, potato product, and seed potato import industry;

(4) Does the association speak for potato, potato product, and seed potato importers; and

(5) Other relevant information as may be warranted.

(e) The public member shall be nominated by the producer and importer members of the Board. * * *

13. Section 1207.328 is amended by revising paragraphs (f) and (h), and adding paragraphs (j) and (k) to read as follows:

§ 1207.328 Duties.

* * * * *

(f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

* * * * *

(h) To act as intermediary between the Secretary and any producer, handler, or importer;

* * * * *

(j) To prepare and submit to the Secretary such reports from time to time as may be prescribed by the Secretary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board; and

(k) To establish an interest-bearing escrow account, pursuant to § 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board, during the period from the effective date of this amended Plan to the time a referendum, required by § 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, is conducted on these amendments, by 10 percent. If the amendments to the Plan are approved and continued pursuant to the referendum, all funds in the escrow account shall be returned to the Board for its use. If the amendments to the Plan are not continued by the referendum, then the funds in the escrow account will be refunded to producers and importers who demand such refunds in accordance with the requirements under § 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990. If the escrow account funds are not sufficient to refund the total amount demanded by all eligible producers and importers, then the funds in the escrow account will be prorated among those producers and importers properly demanding a refund. Any funds remaining in the escrow account after disbursement of such funds to those producers and importers who demanded a refund shall be returned to the Board for its use.

14. Section 1207.342 is amended by revising the first sentence of paragraph (a), redesignating current paragraphs (c) and (d) as paragraphs (e) and (f), and adding new paragraphs (c) and (d) to read as follows:

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued by the Secretary. * * *

* * * * *

(c) The importer of imported potatoes, potato products, or seed potatoes shall pay the assessment to the Board at the time of entry, or withdrawal, for consumption of such potatoes and potato products into the United States.

(d) The assessment on imported tablestock potatoes and frozen or processed potato products for ultimate consumption by humans and on seed potatoes shall be established by the Board so that the effective assessment shall be equal to that on domestic production.

* * * * *

15. Section 1207.343 is revised to read as follows:

§ 1207.343 Refunds

Any producer or importer who has paid an assessment under this amended Plan and who is not in favor of supporting the research and promotion program as provided for in this Plan shall have the right to demand and receive from the Board a one-time refund of such assessment upon submission of proof satisfactory to the Board that the assessment for which the refund is sought has been paid: *Provided,* That the amendment to the Plan to eliminate provisions for refunds of assessments is not approved pursuant to the referendum conducted under § 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. Any such demand shall be made personally by such producer or importer on a form which shall be signed by such producer or importer and within a time period prescribed by the Board pursuant to the regulations. A handler who is also a producer shall be eligible for refunds only on potatoes produced by that handler.

16. Section 1207.350 is amended by redesignating paragraphs (a), (b), and (c) as (1), (2), and (3), respectively, designating the introductory text to the section as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 1207.350 Reports.

* * * * *

(b) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

17. Section 1207.351 is amended by revising the first sentence of the paragraph to read as follows:

§ 1207.351 Books and records.

Each handler or importer subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary such books and records as are appropriate and necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. * * *

18. Section 1207.352 is revised to read as follows:

§ 1207.352 Confidential treatment.

All information obtained from books, records, or reports required pursuant to this part shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan. Nothing in this section shall be deemed to prohibit:

(a) the issuance of general statements based upon the reports of a number of handlers or importers subject to this Plan, which statements do not identify the information furnished by any person; or

(b) the publication by direction of the Secretary of the name of any person violating this Plan, together with a statement of the particular provisions of this Plan violated by such person.

19. Section 1207.362 is amended by revising paragraph (b) to read as follows:

§ 1207.362 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the potato producers and importers to determine

whether potato producers and importers favor termination or suspension of this plan. The Secretary shall suspend or terminate such plan at the end of the marketing year whenever the Secretary determines that its suspension or termination is favored by a majority of the potato producers and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes or potato products, and who produced or imported more than 50 percent of the volume of the potatoes or potato products produced or imported by the producers and importers voting in the referendum.

20. Section 1207.363 is amended by revising paragraph (d) to read as follows:

§ 1207.363 Proceedings after termination.

* * * * *

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1207.412 [Removed]

21. The undesignated center heading above § 1207.412 and § 1207.412 are removed.

22. Section 1207.500 is amended by removing paragraphs (a), (b), (c), (d), (e), (f), (g), and (h), adding a new paragraph (a), and redesignating paragraph (i) as paragraph (b) to read as follows:

§ 1207.500 Definitions.

(a) Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Potato Research and Promotion Plan.

* * * * *

23. Section 1207.502 is added to read as follows:

§ 1207.502 Determination of membership.

(a) Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture.

(b) Pursuant to § 1207.320 and the recommendation of the Board, annual importer memberships on the Board shall be determined on the basis of the average potato, potato product, and seed potato importation of the 3 preceding years as determined by the Board's records.

24. Section 1207.503 is amended by revising the last sentence of paragraph (a), redesignating paragraph (b) as paragraph (c) and revising the newly redesignated paragraph (c), and by adding paragraphs (b) and (d) to read as follows:

§ 1207.503 Nominations.

(a) * * * A list of nominees shall be submitted to the Secretary for consideration by November 1 of each year.

(b) Nominations for importer member positions to the Board shall be obtained from potato or potato product importer associations or organizations. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association;

(2) What percentage of the total number of importers is represented by the association;

(3) Is the association representative of the potato, potato product, and seed potato import industry;

(4) Does the association speak for potato and potato product importers; and

(5) Other relevant information as may be warranted.

(c) Such meetings shall be well publicized with notice given to producers, importers, and the Secretary at least 10 days prior to each meeting.

(d) The public member shall be nominated by the producer and importer members of the Board.

25. Section 1207.507 is amended by revising paragraph (a) to read as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 27 members to include 25 producers, 1 importer, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and six Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

26. Section 1207.510 is revised to read as follows:

§ 1207.510 Levy of assessments.

(a) An assessment of 2 cents per hundredweight shall be levied on all potatoes produced within the United States and on all tablestock, frozen or processed potatoes imported into the United States for ultimate consumption as human food and all seed potatoes imported into the United States.

(b) Potatoes used for other nonhuman food purposes, including starch, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

(c) no more than one such assessment shall be made on any potatoes or potato products.

(d) No assessments shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(e) No assessments shall be levied on otherwise assessable potatoes which are contained in imported products wherein potatoes are not a principal ingredient.

(f) The Board shall provide a formula to the Customs Service to convert imported frozen or processed potato products to fresh hundredweight equivalents for assessment purposes.

27. Section 1207.512 is amended by revising the introductory text to the section to read as follows:

§ 1207.512 Designated handler.

The assessment on each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth.

* * * * *

28. Section 1207.513 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (b)(1), revising the first sentence of newly redesignated paragraph (b)(1), adding paragraph (b)(2), and revising paragraph (c)(1) to read as follows:

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced potatoes shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce. The assessment on imported potatoes, potato products, and seed potatoes shall

become due at the time of entry, or withdrawal, for consumption into the United States.

(b) *Responsibility for payment.* (1) The designated handler is responsible for payment of the assessment on domestically produced potatoes. * * *

(2) The Customs Service shall collect payment of assessment on imported potatoes, potato products, and seed potatoes from importers and forward such assessment per agreement between the Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessment directly to the Board of any assessment due but not collected by the Customs Service at the time of entry, or withdrawal, for consumption into the United States. An importer may apply to the Board for reimbursement of assessments paid on exempted products.

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB, not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

* * * * *

29. Section 1207.514 is revised to read as follows:

§ 1207.514 Refunds.

A one-time refund of assessments may be obtained by a producer or importer only by following the procedure prescribed in this section; *Provided,* That the amendment to the Plan to eliminate provisions for refunds of assessments is not approved pursuant to a referendum conducted under § 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990.

(a) *Application form.* A producer or importer shall obtain a refund form from the Board by written request which shall bear the producer's or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate the partner's or officer's title.

(b) *Submission of refund application to the Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to the Board during a 90-day period which begins 90 days after publication of the results of the referendum held pursuant to § 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. The refund application shall show:

(1) Producer's or importer's name and address;

(2) Handler's or handlers' name(s) and address(es);

(3) The number of hundredweight on which the refund is requested;

(4) Date or inclusive dates on which assessments were paid;

(5) Total amount requested to be refunded; and

(6) The producer's or importer's signature. Where more than one producer or importer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case, the refund application shall show the names, addresses, proportionate shares, and the signature of each producer or importer.

(c) *Proof of payment of assessment.* Evidence satisfactory to the Board that payment of assessment has been made shall accompany the producer's or importer's refund application. Such evidence would include, but not be limited to, receipts given to the producer by the handler, or copy thereof, import documents showing payment, and receipts of payment by importers directly to the Board.

(d) *Payment of refund.* Should the amendment to the Plan to eliminate provisions for refunds of assessments not be approved pursuant to the referendum, the Board shall pay refund requests to producers and importers who demand such refunds according to the procedures prescribed in this section within 60 days after the closing date for requesting such refunds as specified in paragraph (b) of this section. If funds in the escrow account, established pursuant to § 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, are not sufficient to refund the total amount demanded by all eligible producers and importers, then the funds in the escrow account shall be prorated among those eligible producers and importers demanding a refund.

30. Section 1207.515 is amended by revising the first sentence to read as follows:

§ 1207.515 Safeguards.

The Board may require reports by designated handlers and importers on the handling, importation, and disposition of exempted potatoes. * * *

31. Section 1207.532 is amended by revising the introductory text of the section to read as follows:

§ 1207.532 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least 2 years beyond the end of the marketing year of their applicability: * * *

32. Section 1207.533 is revised to read as follows:

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

33. Section 1207.540 is revised to read as follows:

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the Plan.

§ 1207.550 [Removed]

34. Section 1207.550 is removed.

Dated: August 9, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91-19339 Filed 8-12-91; 8:45 am]

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Commodity Credit Corporation

7 CFR Parts 1468 and 1472

Wool and Mohair; Payment Program for Shorn Wool, Wool on Unshorn Lambs and Mohair (1991-1995)

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule, without change, a proposed rule which was published in the Federal Register on May 15, 1991 (56 FR 22357). This final rule amends the regulations at 7 CFR part 1468, to set forth the 1991-1995 wool and mohair

payment programs as authorized by the National Wool Act of 1954, as amended (the Wool act), and deletes the provisions at 7 CFR part 1472 which have been incorporated into part 1468. This final rule also provides: (1) The criteria for a producer's eligibility for price support payments for wool and mohair; (2) a limit on their amount of payments that a producer may receive under each program; (3) a nonrefundable deduction requirement of one (1) percent be made from the amount of payment due a producer of wool and mohair; and (4) the producer with no more than sixty (60) days after the end of the marketing year to file for a wool or mohair price support payment.

EFFECTIVE DATES: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner. Program Specialist, EOLPD, ASCS, USDA, P0. Box 2415, Washington, DC 20013, Telephone (202) 475–3605.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) major increases in cost or prices for consumer, 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..

The title and number of the Federal assistance program to which this proposed rule applies are: title—Commodity Loans and Purchases; Number—10.051; as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Commodity Credit Corporation (CCC) is not 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 have no 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 Office and Management and Budget (OMB) has approved the information collection requirements contained in the current regulations at 7 CFR parts 1468 and 1472 under the provisions of 44 U.S.C., chapter 35 and OMB Number 0560–0023 has been assigned.

The information collection requirements at 7 CFR part 1468 have not changed as a result of this final rule. The information collection required by 7 CFR part 1468 has been approved by OMB through August 31, 1993.

Public reporting burden for the information collections contained in these regulations are estimated to be 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments Received

The Commodity Credit Corporation (CCC) received one comment pertaining to the proposed rule. This comment was submitted by a sheep industry association.

The respondent generally concurred with the proposed rule but was concerned with the proposal that an application for payment had to be filed as soon as possible after completion of the producer's sales of wool and mohair in a specified marketing year, and in any event had to be filed no later than 60 days after the end of the specified marketing year. The respondent proposes that the final rule amend the regulations to allow that any application for payment must be made no later than one (1) year after the end of a specified marketing year. The respondent states that this amendment would address CCC's needs and provide the producer with some flexibility. CCC disagrees with the respondent proposal for the following reasons. The 60-day filing provision would provide:

1. An incentive for producers to file their application timely.

2. Producers' sales of wool and mohair to be figured in the National Average Market Price received by all producers.

3. A greatly reduced administrative cost for maintaining extra years of applications, payment, and reporting data.

4. A more readily verification of producer sales documents to ensure compliance with wool and mohair and other programs requirements.

5. For promotion fund deductions from producers due to the wool and mohair advertising councils to be paid on marketings for the current year without unnecessary carryover.

Accordingly, CCC believes the proposed provision provide for a more efficient way of administering the wool and mohair price support payment program than if it adopted the respondent's proposal.

Therefore, it has been determined not to change the 60-day filing provisions of the proposed rule.

Based upon a review of the comment received, it has been determined that the proposed rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1468

Assistance grant programs—Agriculture, Livestock.

Final Rule

Accordingly, Chapter XIV of title 7 of the Code of Federal Regulations is amended to read as follows:

1. Part 1468 is revised to read as follows:

PART 1468—WOOL AND MOHAIR

Subpart—Payment Programs for Wool, Wool On Unshorn Lambs, and Mohair (1991–1995)

1468.1 Applicability.
1468.2 Administration.
1468.3 Definitions.
1468.4 Eligibility for payments.
1468.5 Bona fide marketing within a specified marketing year.
1468.6 Contents of sales documents.
1468.7 Report of unshorn lambs.
1468.8 Computation of payment.
1468.9 Filing application of payment.
1468.10 Preparation of application.
1468.11 Joint producers.
1468.12 Successors-in-interest.
1468.13 Payment.
1468.14 Deductions for promotion.
1468.15 Assessment.
1468.16 Offsets.
1468.17 Assignment of payments.
1468.18 Maintenance and inspection of records.
1468.19 Misrepresentation, scheme or device.
1468.20 Refunds to CCC; joint and several liability.
1468.21 Appeals.
1468.22 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

Subpart—Payment Program for Shorn Wool, Wool On Unshorn Lambs, and Mohair (1991–1995

§ 1468.1 Applicability.

This part sets forth the terms and conditions of the price support program

for producers of wool and mohair. The level of price support for shorn wool, wool on unshorn lambs, and mohair shall be determined and announced annually by CCC. For each marketing year, price support will be furnished on pulled wool at such level, in relationship to the support price for shorn wool, as CCC determines will maintain normal marketing practices for pulled wool, such support shall be made by means of payments to the producer on the amount of wool and value of such wool on live unshorn lambs that are sold or moved to slaughter in a specified marketing year. Payments will not be made on the sale of the pelts or hides of sheep or lambs or wool removed from such pelts or hides.

§ 1468.2 Administration.

(a) The wool and mohair program shall be administered by the Agricultural Stabilization and Conservation Service ("ASCS") under the general supervision and direction of the Executive Vice President, CCC. The program shall be carried out in the field by the State and county Agricultural Stabilization and Conservation committees ("State and county committees").

(b) State and county committees and representatives and employees thereof, do not have authority to modify or waive any of the provisions of this part.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the programs.

§ 1468.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title shall also be applicable except where those definitions conflict with the definitions set forth in this section.

Approving Official means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for payment made in accordance with this part.

ASCS means the Agricultural Stabilization and Conservation Service.

CCC means the Commodity Credit Corporation.

DASCO means the Deputy or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

Family member means a family member as determined in 7 CFR part 1497 of this chapter.

Goat means an Angora goat or a kid of an Angora goat.

Grease mohair means mohair as it comes from the Angora goat or the kid of an Agnora goat before applying any process to remove the natural oils or fats.

Grease wool means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

Lamb means a young ovine animal which has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

Liveweight is the weight of live lambs which a producer purchases or sells. In the event the price for the lambs is based on weight, the weight actually used in determining the total amount payable shall be considered the liveweight.

Local shipping point means the point at which the producer delivers wool or mohair to a common carrier (including any carrier that serves the public in transporting goods for hire whether or not such carrier is required to be licensed by some government authority to do so) for further transportation or, if the wool or mohair is not delivered to a common carrier, the point at which the producer delivers it to a marketing agency or a purchaser.

Marketing agency with reference to shorn wool or shorn mohair means a person who sells a producer's wool or mahair for the procuder's account, or buys the producer's wool or mohair for the account of the marketing agency, and with reference to lambs, it means a commission firm, auction market, pool manager, or any other person who sells lambs for the account of a producer.

Marketing year means the period beginning January 1 and ending the following December 31, both dates inclusive.

Mohair means the hair of the Angora goat and also includes the hair of a kid of a Angora goat.

Producer of shorn wool, wool on unshorn lambs, or mohair means a "person", as defined in part 719 of this title, who as owner or as a party to an agreement under which the party furnishes labor with regard to the production of the wool or mohair in return for the wool or mohair or in the proceeds of such wool or mohair.

Pulled wool means wool obtained from the pelts or hides of dead sheep. Pulled wool is not eligible for a price support payment. CCC has determined that to maintain normal marketing practices for pulled wool that a payment will be made on sales of wool on lambs that have never been shorn. The payment rate will be at a rate per hundredweight of live lambs to compensate for the wool grown on such lambs while owned by the producer. This payment is subject to adjustment by CCC to avoid duplication of payments on the same wool.

Sales document means the account of sale, invoice, bill of sale, or other related document signed by the purchaser evidencing the sale by the producer of shorn wool, unshorn lambs, or shorn mohair to the purchaser.

Shorn mohair means grease mohair sheared from a live Angora goat or the kid of an Angora goat. Shorn mohair does not include pelts or hides or mohair shorn from pelts or hides, scoured, carbonized, or dyed mohair or yarn, skeins or other terms which identify the mohair as being other than in its natural greasy state.

Shorn wool means grease wool sheared from live sheep or lambs. Shorn wool does not include pelts or hides or wool sheared from pelts or hides, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural greasy state.

Slaughterer means a commercial slaughterer, that is, a person who slaughters for sale as distinguished from a person who slaughters for home consumption.

§ 1468.4 Eligibility for payments.

(a) To be eligible for a payment made under this part, all requirements of this part must be fulfilled. Payment shall be made only with respect to producers of: Shorn wool; wool on unshorn lambs; or shorn mohair.

(b) The rate of payment for wool on unshorn lambs will be 80 percent of the difference between the national average price per pound received by producers for shorn wool during a specified marketing year and a support price for pound for shorn wool multiplied by the

average weight of wool per hundredweight of animals (5 pounds.)

(c) The total amount of payments which a "person", as defined in part 1497 of this chapter may receive under this part for wool and mohair, respectively, may not exceed:

(1) $200,000 for the 1991 marketing year;

(2) $175,000 for the 1992 marketing year;

(3) $150,000 for the 1993 marketing year; and

(4) $125,000 for the 1994 and subsequent marketing years.

(d)(1) To be eligible for price support, shorn wool and shorn mohair must have been shorn in the United States. If wool or mohair is shorn from imported sheep or lambs, or goats while they are held in quarantine in connection with their importation into the United States, such wool or mohair shall not be considered to have been shorn in the United States.

(2) To be eligible for price support on wool on unshorn lambs, the wool must be on lambs that have never been shorn at the time of sale, or in the case of a slaughter, at the time of moving to slaughter.

(e)(1) With respect to shorn wool and shorn mohair, the producer must have owned the wool or mohair at the time of shearing and must have owned in the United States the sheep or lambs, or goats from which the wool or mohair was shorn for not less than 30 days at any time prior to the filing of the application.

(2) With respect to wool on unshorn lambs, the producer must have owned the lambs on which the wool is growing for 30 days or more in the United States and title must have passed to the buyer of the lambs within the specified marketing year. If a slaughter is to qualify for a payment, the slaughterer must have owned the lambs for 30 days or more in the United States prior to their moving to slaughter and they must have moved to slaughter within the specified marketing year.

(3) Ownership does not include an interest as the result of a person having a security interest, mortgage, or lien.

(f) If sheep, lambs, or angora goats are imported into the United States, the 30-day period of required ownership shall begin after their importation and, if they were quarantined in connection with such importation, the period shall begin after their release from quarantine.

(g) Beneficial interest in the shorn wool or shorn mohair must always have been in the producer from the time the wool or mohair was shorn up to the time of its sale. A producer has beneficial interest in wool or mohair:

(1) When the producer owns it and has not authorized any other person to sell or otherwise dispose of it, or

(2) When the producer has authorized another person to sell or otherwise dispose of such wool or mohair but continues to be entitled to the proceeds from any such sale or disposition.

(h) Payments will not be made with respect to the marketing of shorn wool, shorn mohair, or wool on unshorn lambs from imported sheep, lambs, or goats if any documentation states that the importation of such sheep, lambs, or goats is for slaughter.

(i) Payments shall only be made with respect to bona fide marketings of shorn wool or shorn mohair. The sale of shorn wool or shorn mohair which has been altered in any manner through processing, other than scouring or carbonizing as provided in § 1468.6(b)(4), or any other process or act that results in a wool or mohair product, as determined by CCC, is not eligible for a payment.

§ 1468.5 Bona fide marketing within a specified marketing year.

(a) This section is applicable only to shorn wool and shorn mohair. Marketings shall be deemed to have taken place in a specified marketing year if, pursuant to a sale or contract to sell, in the process of marketing the following four events were completed in that marketing year:

(1) Title passed to the buyer;

(2) The wool or mohair was delivered to the buyer physically or through documents that transfer control to the buyer;

(3) The information needed to determine the total purchase price payable by the buyer is known to the producer, the producer's marketing agency; and

(4) The full amount due the producer in connection with the marketing of the wool or mohair has been paid to the producer. A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless CCC makes a determination that:

(i) The producer acted in good faith in marketing the wool or mohair;

(ii) A bona fide marketing occurred;

(iii) The wool or mohair was not returned to the producer;

(iv) At the time of acceptance of the document, the producer was not aware and had no reason to suspect that the document tendered in payment for the wool or mohair was not valid; and

(v) The producer made a diligent effort to obtain payment for the wool or mohair from the purchaser.

(b) The price utilized for the purpose of computing the net sales proceeds under the provisions of § 1468.8 shall not exceed the fair market value of the wool or mohair as determined by CCC.

(c) A bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn wool or shorn mohair in exchange for a specific amount of money per pound of wool or mohair tendered, or for services or merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of wool or mohair by a producer shall constitute a bona fide marketing if:

(1) The wool or mohair is sold to a person or business which is in the business of purchasing grease basis wool or mohair; and

(2) The producer selling the wool or mohair does not sell the wool or mohair to a family member or to any business in which the producer and/or family member has more than a 20 percent interest.

(d) The exchange of wool or mohair for merchandise or services of a nature other than wool or mohair or wool or mohair products will be considered as a bona fide marketing if a definite price for the wool or mohair is established by the parties prior to the exchange. Such price, or whatever other price CCC determines is the fair market value for such wool or mohair, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1468.8.

(e) The delivery of wool or mohair on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee except wool or mohair delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency:

(1) Has guaranteed a minimum sales price;

(2) Is unable to sell the wool or mohair for more than the minimum sales price; and

(3) Takes possession of the wool or mohair at the minimum sales price with the producer's consent. The producer shall be deemed to have consigned the wool or mohair when the wool or mohair has been transferred to a marketing agency and the producer provides that such agency shall market the wool or mohair and that the producer shall be entitled to the proceeds of such marketing.

§ 1468.6 Contents of sales documents.

(a) The sales documents issued with respect to a producer's shorn wool, shorn mohair, or unshorn lambs which is attached to each application for payment must contain a final accounting and meet the requirements of this section. Contracts to sell and tentative settlements are not acceptable sales documents.

(b) Each sales document must include:

(1) The name, address and zip code of the seller;

(2) The name, address and zip code of the purchaser or marketing agency which issues the sales document;

(3) The date of sale. If the sale of shorn wool or shorn mohair is by a marketing agency in parts within a marketing year, the date when final settlement is made within that marketing year for such wool or mohair that was sold within that marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place. Such document shall contain a statement that the wool or mohair was marketed during that marketing year.

(4) For shorn wool and shorn mohair, the net weight of wool or mohair sold on a grease basis. If the wool or mohair was sold as scoured or carbonized, the original grease weight must be shown as well as the scoured or carbonized weight.

(5) For shorn wool and shorn mohair sold at a farm, ranch or shipping point, the net amount received by the seller;

(6) For shorn wool and shorn mohair sold at other points:

(i) The gross amount paid to the seller on a grease basis.

In addition, the net amount paid to the seller after the deduction of marketing deductions must be shown on the sales document.

(ii) Such marketing deductions may be itemized or as a composite amount for all marketing charges with an explanation of what services are included in that amount. If it is the practice of a marketing agency to show, on the sales document, only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows:

"The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services: _____. Details of these charges will be furnished on request."

All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges. Association dues are marketing deductions if they include compensation for marketing services.

(iii) If a sales document contains a figure for net proceeds after marketing deductions, computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have been computed. If a marketing agency has guaranteed a minimum sales price for the wool or mohair, is unable to sell the wool or mohair for a higher price, and therefore settles with the producer on the basis of such guaranteed minimum price, the sales document shall be on the basis of guaranteed minimum price, regardless of a lower price at which the agency may sell the wool or mohair. In such a case, the marketing agency shall indicate on the sales document that the price is the guaranteed minimum sales price.

(7) For shorn wool and shorn mohair, any nonmarketing deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of shorn wool or mohair.

(8) If issued with respect to a sale in which the sale proceeds are other than in cash, a clear statement that the transaction is on the basis of the exchange of merchandise or services rather than cash.

(9) The original handwritten signature of the entity, or entity's agent, purchasing the shorn wool, shorn mohair, or unshorn lambs. Carbon or other facsimile copies of such signature are not acceptable except as approved by CCC.

(10) For wool on unshorn lambs:

(i) The number of unshorn lambs sold which are the source of such wool. If the sales document does not clearly identify the lambs as having never been shorn at the time of sale, the person issuing the sales document shall add a statement to that effect. If the sales document refers to the animals as "unshorn lambs", this will indicate that the lambs were never shorn. If the document issued in connection with the sale of unshorn lambs also covers the sale of other animals, the person preparing the sales document shall clearly indicate therein the number and the liveweight of unshorn lambs included in the sale.

(ii) The liveweight of unshorn lambs sold. If the weight is not determined by scales, this weight may be an estimated weight agreed to by the purchaser and the producer.

(iii) The scale ticket which was issued with respect to such sales. Such scale ticket must contain the date of issuance, the number of lambs weighed, the classification and weight by classification of the lambs, the place of weighing, the name of the weigher and scale ticket number if any is normally made by the weigher.

§ 1468.7 Report of unshorn lambs.

(a) Producers who submit an application for payment on shorn wool or wool on unshorn lamb payment shall provide the information required by this section with respect to the purchase of unshorn lambs.

(b) For shorn wool payments. (1) If the application includes wool removed in the first shearing of lambs purchased unshorn, and the producer is able to identify the lambs from which such wool was shorn, the producer shall report the number and liveweight of such lambs at time of purchase, including those from which wool was removed after death.

(2) If the producer knows that the application does not include any wool which was removed in the first shearing of lambs purchased unshorn, the producer will state that there are no purchases of unshorn lamb related to the sale of such wool.

(3)(i) If a producer does not know whether the application includes wool removed in the first shearing from lambs purchased unshorn, or a producer knows that such wool is included but is unable to identify the lambs from which such wool was shorn, the producer shall report in chronological order (i.e., on a "first in, first out" basis) the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of sheep and lambs from which wool was shorn and included in the application. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on shorn wool and for payments on unshorn lambs until the producer has accounted for all lambs purchased unshorn not reported in previous applications. However, the producer need not report those lambs with respect to which the producer can establish that no price support application for either shorn wool or pulled wool has been made in the current or a subsequent marketing year.

(ii) If the application for payment on the sale of shorn wool is made after a producer has accounted for the total purchases of unshorn lambs, the producer shall state that there are no

purchases of unshorn lambs related to such sale.

(c) For wool on unshorn lamb payments: (1) If the application is based on the sale or slaughter of lambs purchased unshorn and the producer is able to identify such lambs, the producer shall report the number of lambs purchased and their liveweight at the time of purchase.

(2) If the producer knows that the application is not based on the sale or slaughter of such lambs purchased unshorn, the producer shall state that there are no purchases of unshorn lambs related to the sale or slaughter of such lambs.

(3)(i) If a producer does not know whether the application is based on the sale or slaughter of lambs purchased unshorn, or knows that such lambs are included but is unable to identify such lambs, the producer shall report in chronological order (i.e., on a "first in, first out" basis) the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of lambs on which the application is based. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on the wool on unshorn lambs and shorn wool until the producer has accounted for all lambs purchased unshorn that were not reported in previous applications. However, the producer need not report those lambs with respect to which the producer can establish that no price support application for either shorn wool or wool on unshorn lambs has been made in the current or a subsequent marketing year.

(ii) If the application for payment on wool on unshorn lambs is based on the sale or slaughter of unshorn lambs after a producer has accounted for the total purchases of unshorn lambs, the producer shall state that there are no purchases of unshorn lambs related to such sale or slaughter.

(d) If purchased lambs which the producer is required to report were imported, the liveweight required to be reported shall be the liveweight of the lambs at the time of import, or, if they were quarantined in connection with the importation, at the time of release from quarantine. For the purpose of reporting imported lambs, whether they were purchased or raised by the producer, they shall be treated as if they had been purchased. Any report in an application of purchased lambs and their liveweight as required by this paragraph shall be deemed to include lambs both purchased and raised by the producer.

(e) Additional information. The producer shall furnish any additional details requested by CCC concerning any report made pursuant to this section.

§ 1468.8 Computation of payment.

(a)(1) The amount of the shorn wool or shorn mohair price support payment shall be computed by applying the rate of payment to the net sales proceeds for the wool or mohair marketed during the specified marketing year, less the assessment due as specified in § 1468.15. For shorn wool payments, if there is a purchase by the producer of unshorn lambs, the resultant amount shall be reduced, by an amount resulting from multiplying the liveweight of such lambs reported in the application for payment by the calculated wool on shorn lambs price support for such marketing year. If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

(2) Except as provided in § 1468.6(b)(6) with respect to a guaranteed minimum sales price, the net sales proceeds for shorn wool and shorn mohair shall be determined by deducting from the gross sales proceeds of the wool or mohair all marketing expenses, such as any charges paid by or for the account of the producer for transportation, handling (including commissions), grading, scouring, or carbonizing. The figure so arrived at will express the net proceeds received by the producer at the farm, ranch, or local shipping point.

(b) The amount of the wool price support payment due to a producer for wool on unshorn lambs shall be computed by applying the rate of payment to the liveweight of the lambs sold or moved to slaughter during the specified marketing year, reduced, on account of the purchase or importation by the producer of unshorn lambs, by the liveweight of such lambs reported in the application for payments, less the assessment due as specified in § 1468.15. If the amount of the reduction exceeds the liveweight of the unshorn lambs sold or moved to slaughter during said marketing year, such excess liveweight shall be carried forward and used to reduce payments on the wool on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

(c) All applications filed by a producer in the same county office during the specified marketing year, shall be considered together for the purpose of determining the total net amount of payments due. At CCC's discretion, all such applications filed in different county offices may be considered together in determining such total payment.

§ 1468.9 Filing application for payment.

(a) Applications for payment shall be filed by the producer with the ASCS county office serving the county where the headquarters of the producer's farm, ranch, or feed lot, as the case may be, is located. If the producer has more than one farm, ranch, or feed lot, with headquarters in more than one county, separate applications for payment shall be filed with the county office serving each such headquarters covering only the wool and lambs produced at each such farm, ranch, or feed lot, except that:

(1) If the producer sells the entire clip of wool or mohair in a single sale or if the entire clip is sold for the producer's account by one marketing agency, the producer may file the application for payment on shorn wool or shorn mohair in any one of those ASCS county offices; or

(2) If the producer includes in one sale unshorn lambs that were ranged, pastured, or fed in more than one county, the producer may file the application for payment on the wool on such unshorn lambs in any one of those county ASCS offices. In the event all business transactions are conducted from the producer's residence or office, and the farm or ranch has no other headquarters, the office or residence may be considered the farm or ranch headquarters.

(b) An application for payment shall be filed as soon as possible after completion of the producer's sales of shorn wool, or unshorn lambs, or mohair in a specified marketing year, or in the case of slaughter, as soon as possible after the last of the lambs moved to slaughter in the specified marketing year, but in no event shall an application be filed later than 60 days after the end of the respective marketing year.

(c)(1) A producer may request permission from CCC to withdraw an application for payment for shorn wool which constitutes the full first shearing of purchased wool, or for wool on unshorn lambs when, as a result of such application containing the necessary report of purchases of unshorn lambs, there is excess liveweight carried forward which would be used to reduce payment in the current or future marketing years. A producer may also

request permission to amend the application by omitting sales of those lots of wool constituting the full first shearing of unshorn lambs reported. These requests must be accompanied by such supporting evidence as may be required by CCC. If the application was signed jointly by two or more producers, the request for withdrawal or amendment must be signed by each such producer. To be considered a full shearing, the wool must constitute the complete fleece, and not merely tags, clippings, trimmings around the eyes, or other off-wools.

(2) If CCC determines that such conditions described in paragraph (c)(1) of this section exist, CCC may grant the request. If the producer has filed additional shorn wool or shorn mohair applications in other ASCS county offices, the request may be granted only if it is determined that such additional applications do not include any wool or mohair removed in the full first shearing of the lambs or goats which will not be reported as a result of the withdrawal or amendment.

§ 1468.10 Preparation of application.

(a) Application for price support for shorn wool, shorn mohair, and wool on unshorn lambs must be submitted by completion of Form CCC–1155, "Application for Payment (National Wool Act)." Marketing agencies may assist producers in filling out applications by inserting the information on sales of wool and mohair and sending sales documents to the appropriate county office, but the producer must sign the application and is responsible for the requirements as to the time and manner of filing the application. If the producer paid marketing charges not shown on the sales document, such charges shall be considered with the marketing charges shown on the sales document in arriving at the net proceeds.

(b) The application shall be supported by the original sales document evidencing the sale of wool, unshorn lambs, and mohair. The processing of shorn wool or shorn mohair by a process or act which, as determined by CCC, produces a wool or mohair product, shall make the wool or mohair ineligible for a price support payment. Payment shall not be made on marketings of wool or mohair products, including, but not limited to, items identified as yarn, wool or mohair yarn, skeins, or novelty items. Trimming, skirting, and cleaning by scouring or carbonizing, provided the grease basis weight is established, does not disqualify the wool or mohair for a price support payment.

(c) If the producer does not wish the original sales document to remain with the county office, a carbon, photocopy, or other copy of the original document may be submitted. However, the producer must submit the original document to the ASCS county office where the statements on the copy will be confirmed by comparison with the original. The original sales document shall be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and shall be returned to the producer.

(d) If it is the practice of the person or firm preparing the sales document to furnish a carbon, photocopy, or other copy to the seller in the place of the original, the producer may submit that copy in support of the application, provided the copy bears a signature of the person or of the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purposes of this section.

(e) If the original sales document has been lost or destroyed, the producer may submit a copy, certified by the buyer or the producer's marketing agency, and such certified copy shall be treated as an original for the purposes of this section.

§ 1463.11 Joint producers

In the case of a joint application for payment, each applicant must be an eligible producer of shorn wool, pulled wool, or shorn mohair. Each application must be signed by the producer or a person approved by CCC to sign on behalf of the producer. All of the joint producers must sign any application based on the sale of shorn wool or shorn mohair regardless of whether the wool or mohair was divided among such producers prior to sale or was sold without division. All of the joint producers must sign any application based on the sale of unshorn lambs regardless of whether the lambs were divided among such producers prior to sale or were sold without division. When the application shows such joint production and one or more of the joint producers refuse to join in the application, if each such joint producer signs a form approved by CCC releasing CCC from any obligation to make a payment to such a joint producer, CCC shall make payment of the amount due the remaining joint producers who sign the application. Such release shall be attached to the application. When any joint producer is entitled to sign an application but fails to do so, and the application does not show this interest as a joint producer, the producer shall have no claim against CCC for any portion of the payment made pursuant to the application.

§ 1468.12 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer eligible to receive payment under this part, before marketing the shorn wool, unshorn lambs, or shorn mohair or before filing an application, the successors or representatives authorized to receive payment as set forth in part 707 of this title may make application for such payment by complying with the provisions of part 707 of this title.

(b) If a producer who earned a payment under this part and filed an application therefore dies, disappears, or is declared incompetent, either before CCC has issued a check in payment or after CCC has issued a check in payment but before the draft is negotiated, the provisions of part 707 of this title shall be applicable.

(c) If an Indian who is incompetent earned a payment under this part, an application for payment may be filed on the Indian's behalf by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. Such application for payment will be filed in the county office where the headquarters of the Indian's farm or ranch is located.

§ 1468.13 Payment.

(a) Payments under this part shall be made only on the basis of the net sales proceeds received for wool or mohair or the calculated amount of wool grown on unshorn lambs sold or moved to slaughter. No payment shall be made on that part of any sale which has been canceled or on the basis of prices or weights which have been fraudulently increased for the purpose of obtaining higher payments. No payment shall be made on sales to a wool or mohair growers association, which is not a cooperative marketing association, by its producer-members on the basis of net sales proceeds in excess of the fair market value of the wool or mohair (grease basis), as determined by CCC.

(b) Notwithstanding any other provision of this part, price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible wool or mohair which is based on sales prices in excess of the maximum sales price per pound for wool or mohair as determined by CCC. CCC shall determine the maximum sales price per pound for wool or mohair

marketed in each marketing year on the basis of the national average market price for wool or mohair computed for each marketing year. The maximum sales price shall be an amount which CCC determines will encourage the continued domestic production of wool or mohair at prices fair to both producers and consumers in a manner which would assure a viable domestic wool or mohair industry. The maximum sales price shall be publicly announced by CCC at the end of each marketing year for wool or mohair.

(c) If it is determined by CCC that a producer knowingly made a false statement in the application, including failure to report accurately purchases of unshorn lambs, no payment shall be made with respect to such application.

(d) If CCC subsequently determines that available evidence does not establish the producer's right to all or any part of the payment made, the amount of such payment shall immediately become due and repayable to CCC.

(e) If CCC rejects in whole or in part an application for payment or, after a payment has been made, determines that the available evidence does not establish the producer's right to the payment or any part thereof, the county office shall mail a notice specifying the reason for such determination to the producer.

§ 1468.14 Deductions for promotion.

Deductions for advertising and sales promotion programs may be made from payments made under this part pursuant to promotion agreements executed by a designee of the Secretary. Such deductions are assignments by the producer to the person or agency designated in such agreements. The rate of such deductions for the specified marketing year will be announced and the appropriate deduction will be made from each payment due under this part for such specified marketing year.

§ 1468.15 Assessment.

Effective for each of the marketing years beginning January 1, 1991, and ending December 31, 1995, a nonrefundable deduction of one (1) percent will be made from the amount of payment made under this part.

§ 1468.16 Offsets.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the wool, the sheep or unshorn lambs, the mohair or the angora goats thereof, or proceeds thereof, in favor of the producer or any other creditors except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to this part.

§ 1468.17 Assignment of payments.

Payments which are earned by a producer under the payment program for wool, unshorn lambs, and mohair may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1468.18 Maintenance and inspection of records.

(a) The producer filing an application for a payment under this part and the marketing agency who furnishes evidence to such producer for use in connection with the application, shall maintain books, records, and accounts pertaining to the marketing of the commodity on which the application is based, for 3 years following the end of the specified marketing year during which the marketing took place. The producer shall maintain books, records, and accounts pertaining to the production of wool, sheep, lambs, mohair and goats, and the shearing thereof, with respect to which the producer applies for payment, for 3 years following the end of the specified marketing year during which the marketing took place. The producer shall also maintain books, records, and accounts showing the purchases of lambs for 3 years following the end of the specified marketing year during which any such lambs have been marketed. If the producer is required to report purchases of unshorn lambs on a "first in, first out" basis, the producer shall maintain such books, records, and accounts of such lambs for 3 years following the end of the specified marketing year for which such lambs are to be reported.

(b) If an application is based on the sale of wool shorn from imported sheep or lambs, or on the sale of imported unshorn lambs, or if lambs required to be reported as purchased unshorn were imported, the books, records, and accounts required by paragraph (a) of this section to be maintained by the producer shall show the details of such importation, including the date of arrival of the lambs in the United States and the liveweight on such date, and if the lambs were quarantined, the date when they were released from quarantine and their liveweight on such date.

(c) With respect to any application for payment filed after the end of the specified marketing year, instead of maintaining the books, records, and accounts for the time specified in paragraph (a) of this section, such books, records, and accounts shall be maintained for 3 years following the date on which the application is filed.

§ 1468.19 Misrepresentation, scheme or device.

(a) Whoever issues a false sales document or otherwise acts in violation of the provisions of this program so as to enable a producer to obtain a payment to which such producer is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false sales doucment or the making of a false statement in an application for payment or other document, for the purpose of enabling the producer to obtain a payment to which such producer is not entitled, will subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1468.20 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made under this part to any producer shall be refunded to CCC, together with interest as provided for in part 1403 of this chapter.

(b) All producers shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of this part.

(c) Producers who receive a shorn wool, shorn mohair, or wool on unshorn lambs price support payment must refund to CCC any excess payment made by CCC with respect to such payment.

(d) In the event that a shorn wool, shorn mohair, or wool on unshorn lambs price support payment was made as a result of erroneous information provided by any producer to the county office or was erroneously computed by such office, the payment due the producer shall be recomputed and any payments made or due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputations shall be remitted to CCC with any applicable interest.

§ 1468.21 Appeals.

Any producer who is dissatisfied with a determination made with respect to this part, may make a request for reconsideration or appeal of such

determination in accordance with the appeal regulations set forth at part 780 of this title.

§ 1468.22 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1468) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been signed OMB Number 0560–0023.

PART 1472—[REMOVED]

2. Part 1472 is removed.

Signed this 7th day of August 1991.

Keith D. Bjerke.

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–19254 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Parts 1924 and 1955

RIN 0575–AA41

Complaints and Compensation for Construction Defects

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulation governing the compensation for construction defects program. This program enables FmHA borrowers with loans made under section 502 of the Housing Act of 1949 to apply for compensation to correct defects in newly constructed dwellings which the builder cannot or will not correct. Currently, the program is based on whether complaints are justified or non-justified. FmHA is amending the regulation to classify defects as structural or non-structural and provide specific guidance on handling each category of defects. In addition, FmHA is adding provisions for handling complaints involving manufactured housing, and dwellings or units covered by warranties other than, or in addition to, the builder's warranty. The intended effect of the action is to clarify the procedure for compensating borrowers for construction defects which are due to circumstances beyond the borrower's control.

EFFECTIVE DATE: September 13, 1991.

FOR FURTHER INFORMATION CONTACT: Robin H. Ponton, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, 14th and Independence Avenue SW., room 5307, Washington, DC 20250, telephone: (202) 382–1452.

SUPPLEMENTARY INFORMATION: On July 20, 1990, FmHA published a proposed rule at 55 FR 29597 to make revisions to subpart F of part 1924 of chapter XVIII of the Code of Federal Regulations. This action proposed to amend the method used to determine if various defects were eligible for compensation, and to include provisions for handling complaints about defects in manufactured homes. Interested persons were invited to submit written comments concerning the proposed rule by September 20, 1990. Four comments were received: two comments from housing advocacy groups, one from an independent home warranty program, and one from within FmHA. The specific recommendations contained in these comments are addressed below:

Two commentors recommended that language be inserted in § 1924.252 to indicate that FmHA will assist the borrower in obtaining correction of items that are determined to be non-structural. Since the complaint procedure outlined in § 1924.259 indicates that FmHA will assist the borrower in contacting the contractor and/or manufacturer, we have revised § 1924.252 to reflect this. We have also revised §§ 1924.260 and 1924.261 to state that FmHA will assist the borrower in contacting the appropriate parties in handling complaints involving manufactured housing and/or independent home warranty companies.

One commentor pointed out that the definition of "newly constructed dwelling" excluded dwellings built under conditional commitments. We have revised the definition to include such dwellings. The same commentor also recommended that dwellings constructed under the mutual self-help program be included under this definition. We have not adopted this recommendation. It is inherent in the mutual self-help housing program that borrowers assume some of the responsibility for construction quality in order to reduce the cost of the finished dwelling. However, we recognize that contractors may perform some of the work on such dwellings. If the defects result from work performed by a contractor, then these defects would be eligible for compensation under this regulation.

One commentor was concerned that the definition of structural defect was much more broad than the one used by independent home warranty companies and HUD. The commentor suggested that the term "structural defects" should only apply to load bearing components and that such things as safety features and protective materials could be defined as "major deficiencies." However, the statute specifically refers to "structural defects" and gives the Secretary discretion to "prescribe the terms and conditions under which expenditures and payments may be made * * *". Therefore, we have made the definition of "structural defect" intentionally broader than those used by HUD or private industry. This recommendation was not adopted.

Two commentors suggested that the 18 month statutory limit for filing complaints is too short in some cases and one suggested that FmHA petition Congress to "permit an extension of the 18 month limit, applicable only when the defect is not practicably observable before that time." We believe that most serious structural defects are detectable within the 18 month period and it would be unrealistic to expect FmHA to be able to determine the cause of defects 10 years after the dwelling was completed. Therefore, we have not adopted this recommendation.

Section 1924.258 provides for notification of borrowers concerning their options under this regulation within 30 days of loan closing or final inspection of the property, whichever is later. One commentor suggested that should final inspection not occur within one year, borrowers should be notified at that time, because "FmHA borrowers are not always sophisticated and need time to pursue their rights." If the commentor is inferring that borrowers are entitled to compensation under this regulation if the construction is not completed within one year, this is not correct. Compensation for construction defects is not granted in cases where the contractor did not complete items listed in the construction specifications. Therefore, we have not adopted this recommendation.

Another commentor expressed concern that the last sentence in § 1924.258 delayed advising the borrower of apparent structural defects until it might be too late to file a claim. We have amended this section to require that if FmHA does so notify the borrower, the notification will be documented in the borrower's case file to show that the defect was known to FmHA within the 18 month timeframe.

Under § 1924.266, one commentor stated that requiring the contractor making the repairs to provide a warranty covering these repairs may be costly and unattainable, and recommended clarification of the terms

of the required warranty. We have amended this section to state that the warranty will be the standard FmHA Builder's Warranty and/or the manufacturer's warranty on items such as the heat pump, hot water heater, floorcoverings, etc., as prescribed in subpart A of part 1924 of this chapter.

One commentor objected to the requirement that borrowers attempt to sell the dwelling or unit before FmHA would consider accepting a voluntary conveyance. The commentor stated that borrowers would be marketing defective properties, exposing both themselves and FmHA to possible litigation. We have amended this section to require borrowers to attempt to sell their property only if it meets FmHA's standards for "program" properties as prescribed in subpart A of part 1944 of this chapter. If this is not the case, FmHA will consider accepting a voluntary conveyance and then market the property as "nonprogram" with the appropriate deed restrictions. We have also included a reference to this provision under subpart A of part 1955 of this chapter.

One commentor suggested raising the dollar limits under § 1924.266 to reflect current costs for moving, storage and related expenses. In the proposed rule, FmHA did raise the daily limit for temporary living expenses to equal the Government per diem rate for the area in which the residence is located. We have further amended this section to increase allowances for other expenses related to the claim for compensation.

One commentor questioned the use of a "form designated by FmHA," stating that neither the public nor FmHA County Supervisors would be provided with any specific information. All applicable forms and instructions are available in any FmHA office, and the instruction manual inserts furnished to FmHA field offices contain detailed procedures for handling complaints. We have revised the applicable sections to reflect that all forms and instructions are available in any FmHA office.

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.410 Low Income Housing Loans (Section 502 Rural Housing Loans)

Intergovernmental Consultation

For the reasons set forth in the Final Rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program". It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

The following revisions have been made to the proposed rule:

Section 1924.252 has been revised to state that FmHA will assist the borrower in obtaining assistance through the independent home warranty company's and/or manufacturer's complaint resolution process.

Section 1924.253 has been revised by clarifying the definition of newly constructed dwelling to include dwellings constructed under conditional commitments. It also includes a dwelling constructed under the mutual self-help program, but only as to the work which was performed by a contractor or covered by a manufacturer's warranty.

Section 1924.258 has been revised to clarify guidance on notifying borrowers of the provisions of this subpart, and provide for documentation of this notification in the borrower's case file.

Sections 1924.260 and 1924.261 have been revised to provide that FmHA will assist borrowers with completing the complaint resolution process for independent home warranty companies and/or manufactured housing units.

Section 1924.262 has been revised to provide guidance on handling construction defect complaints on dwellings constructed by the self-help method.

Section 1924.265 has been revised by deleting the references to loans to purchase an existing dwelling or manufactured housing unit.

Section 1924.266 has been revised to require the borrower to sell the dwelling or unit only if it meets the criteria for decent, safe and sanitary housing as prescribed in subpart C of part 1955 of this chapter. If the dwelling or unit does not meet these criteria, FmHa will consider accepting a voluntary conveyance of the property. This section has also been revised to raise the dollar limits for related expenses in connection with a claim for compensation under this subpart.

Former § 1924.263 has been renumbered to § 1924.276 and revised to require that debarment be initiated against contractors, as companies and individuals, and their successor entities, if known, even if the contractor has gone out of business.

Section 1924.300 has been added to provide the OMB control number for this regulation.

Section 1955.10 of subpart A of Part 1955 of this chapter has been revised to include a reference to consideration of acceptance of voluntary conveyances under subpart F of part 1924 of this chapter.

List of Subjects

7 CFR Part 1924

Construction and repair, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Claims, Construction complaints, Construction defects.

7 CFR Part 1955

Agriculture, Drug traffic control, Foreclosure, Government property, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 is revised to read as follows and the authority citation at the beginning of each subpart is removed.

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

2. Subpart F (consisting of §§ 1924.251 through 1924.300) of part 1924 is revised to read as follows:

Subpart F—Complaints and Compensation for Construction Defects

Sec.

1924.251 Purpose.
1924.252 Policy.
1924.253 Definitions.
1924.254–1924.257 [Reserved]
1924.258 Notification of borrowers.
1924.259 Handling dwelling construction complaints.
1924.260 Handling manufactured housing (unit) construction complaints.

Sec.

1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.
1924.262 Handling complaints involving dwellings constructed by the self-help method.
1924.263–1924.264 [Reserved]
1924.265 Eligibility for compensation for construction defects.
1924.266 Purposes for which claims may be approved.
1924.267–1924.270 [Reserved]
1924.271 Processing applications.
1924.272 [Reserved]
1924.273 Approval or disapproval.
1924.274 Final inspection.
1924.275 [Reserved]
1924.276 Action against contractor.
1924.277–1924.299 [Reserved]
1924.300 OMB control number.

Subpart F—Complaints and Compensation for Construction Defects

§ 1924.251 Purpose.

This subpart contains policies and procedures for receiving and resolving complaints concerning the construction of dwellings and construction, installation and set-up of manufactured homes (herein called "units"), financed by the Farmers Home Administration (FmHA), and for compensating borrowers for structural defects under section 509(c) of the Housing Act of 1949, as amended. Provisions of this subpart do not apply to dwellings financed with guaranteed section 502 loans.

§ 1924.252 Policy.

FmHA is responsible for receiving and resolving all complaints concerning the construction of dwellings and the construction, installation and set-up of units financed by FmHA. FmHA must determine whether defects are structural or non-structural. If the defect is structural and is covered by the builder's/dealer-contractor's (the "contractor") warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the costs of correcting the defect may be paid by the Government, or the borrower may be compensated for correcting the defect, under the provisions of this subpart. If the defect is non-structural but is covered under the provisions of the contractor's warranty or independent home warranty, the contractor is still expected to correct the defect. FmHA will assist the borrower in obtaining assistance through the independent home warranty company's and/or manufacturer's complaint resolution process. However, if the contractor cannot or will not correct a non-structural defect covered under the provisions of the contractor's warranty, the Government will not pay the costs for correcting the defect, nor will the borrower be compensated for doing so.

§ 1924.253 Definitions.

As used in this subpart, the following definitions apply:

(a) *Newly constructed dwelling.* One which:

(1) Is financed with a Section 502 insured loan;

(2) Was constructed substantially or wholly under the contract method, or under a conditional commitment, or, as to only work performed by a contractor or covered by a manufacturer's warranty, under the mutual self-help program.

(3) Was not more than one year old and not previously occupied as a residence at the time financial assistance was granted unless FmHA has extended the conditional commitment issued on a newly constructed dwelling in accordance with subpart A of part 1944 of this chapter; and

(4) Had the required construction inspections performed by FmHA, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA).

(b) *Newly constructed manufactured home (unit).* One which:

(1) Is financed with a section 502 insured loan;

(2) Was not more than one year old and not previously occupied as a residence at the time financial assistance was granted; and

(3) Is built to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and is certified by an affixed label as shown in Exhibit F of subpart A of part 1944 of this chapter.

(c) *Non-structural defect.* A construction defect which does not affect the overall useful life, habitability, or structural integrity of the dwelling or unit. Some non-structural defects may be covered under the contractor's warranty. Examples of non-structural defects include, but are not limited to:

(1) Cracks attributed to normal curing or settlement.

(2) Cosmetic defects in cabinets, woodwork, floorcovering, wallcovering, ornamental trim, etc.

(3) Improper or incomplete seeding or sodding of yard, or failure of trees, shrubs, grass and other landscaping items to thrive.

(4) Improper grading of yard, unless the grade is causing damage which may lead to a structural defect.

(d) *Structural defect.* A defect in the dwelling or unit, installation or set-up of a unit, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The term includes, but is not limited to:

(1) Structural failures which directly and significantly affect the basic integrity of the dwelling or unit such as in the foundation, footings, basement walls, slabs, floors, framing, walls, ceiling, or roof.

(2) Major deficiencies in the utility components of the dwelling or unit or site such as faulty wiring, or failure of sewage disposal or water supply systems located on the property securing the loan caused by faulty materials or improper installation.

(3) Serious defects in or improper installation of heating systems or central air conditioning.

(4) Defects in or improper installation of safety and security devices, such as windows, external doors, locks, smoke detectors, railings, etc., as well as failure to provide or properly install devices to aid occupancy of dwellings by handicapped individuals, where required.

(5) Defects in or improper installation of protective materials, such as insulation, siding, roofing material, exterior paint, etc.

§§ 1924.254–1924.257 [Reserved]

§ 1924.258 Notification of borrowers.

FmHA will notify by letter all borrowers who receive Section 502 RH financial assistance for a newly constructed dwelling or unit of the provisions of this subpart. Subsequent owners of eligible dwellings will also be notified in accordance with this section. Borrowers will be notified within 30 days after the loan is closed, or within 30 days after final inspection, whichever is later. This notification will contain information concerning time frames for filing claims under this subpart. FmHA will also notify and advise borrowers of the construction defects procedure at any time construction defects are apparent within the statutory time frame and favorable results cannot be obtained from the contractor. This notification will be documented in the borrower's case file.

§ 1924.259 Handling dwelling construction complaints.

This section describes the procedure for handling construction defect complaints.

(a) Each borrower who complains about construction defects will be requested to make a written complaint using a format specified by FmHA (available in any FmHA office). All known defects will be listed. An oral complaint may be accepted if making a written complaint will impose a hardship on the borrower. If an oral complaint is made, FmHA will notify the contractor on behalf of the borrower.

(b) The borrower will be informed that if, after 30 calendar days, the defects have not been corrected or other satisfactory arrangements made by the contractor, the borrower should notify FmHA using a format specified by FmHA (available in any FmHA office).

(c) FmHA will advise the contractor in writing of the borrower's complaint, the time and date of planned inspection by FmHA personnel, and request that the contractor accompany the inspector and borrower on a joint inspection of the property in an attempt to resolve the complaint.

(d) If, prior to the planned inspection, the contractor informs FmHA that the alleged defect(s) has been or will be corrected within 30 calendar days, FmHA will notify the borrower.

(e) If the case is not resolved as outlined in paragraph (d) of this section, FmHA will:

(1) [Reserved]

(2) Notify the borrower, contractor and manufacturer, if applicable, in writing of FmHA's findings and who has been determined responsible for correcting the defect(s).

(i) If the defects are determined to be covered under the contractor's warranty, FmHA will advise the contractor that the repairs must be completed within 30 calendar days or other time period agreed to by the borrower, the contractor, and FmHA.

(ii) FmHA will further advise the contractor and/or manufacturer that if the defect(s) are not corrected, the Government will consider compensating the borrower for the costs of correcting the defect(s). In such a case, the contractor and/or manufacturer may be liable for costs paid by the Government and may be subject to suspension and/or debarment pursuant to subpart M of part 1940 of this chapter (available in any FmHA office). Even if the manufacturer is determined to be solely responsible for the defect, the contractor will still be held liable for correction of the defect.

(3) Should a contractor refuse to correct a defect after being officially requested in writing to do so, FmHA will promptly institute formal suspension and debarment proceedings against the contractor (as a company and as individual(s)) in accordance with subpart M of part 1940 of this chapter (available in any FmHA office). The contractor's failure to reply to official correspondence or inability to correct a defect constitutes noncompliance.

(4) If the contractor is willing to correct legitimate defects but the borrower refuses to permit this, FmHA will document the facts in the borrower's case file. If the borrower chooses to file a claim for compensation for these defects, the circumstances of the borrower's refusal will be reviewed and may be sufficient grounds for disapproval of the claim.

(g) [Reserved]

(h) [Reserved]

§ 1924.260 Handling manufactured housing (unit) construction complaints.

When a borrower who has purchased a manufactured home (or "unit") complains about construction defects, the borrower will be instructed to first contact the dealer-contractor from whom the unit was purchased. FmHA will assist the borrower in obtaining assistance through the dealer-contractor's and/or HUD's complaint resolution process. If the dealer-contractor cannot resolve the complaint, the borrower should contact the appropriate State Administrative Agency (SAA) or HUD. If the complaint resolution process does not result in the correction of the defect, the borrower's complaint will be handled in accordance with § 1924.259 of this subpart.

§ 1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.

Borrowers with complaints about dwellings covered by an independent or insured home warranty plan will be instructed to first contact the warranty company and follow the complaint resolution process for that company, with the assistance of FmHA, if needed. If the complaint is not resolved in this manner, it will be handled under § 1924.259 of this subpart.

§ 1924.262 Handling complaints involving dwellings constructed by the self-help method.

When a borrower whose dwelling was constructed by the self-help method complains about construction defects, FmHA will determine whether the defect is the result of work performed by a contractor or work performed by the borrower under the guidance of the self-help group. Defects which are determined to be the responsibility of a contractor will be handled in accordance with § 1924.259 of this subpart. Defects determined to be the result of work performed by the borrower are not eligible for compensation under this subpart.

§§ 1924.263–1924.264 [Reserved]

§ 1924.265 Eligibility for compensation for construction defects.

(a) To be eligible for assistance under this subpart, the following criteria must be met:

(1) The approval official, in consultation with the State Architect/Engineer and/or Construction Inspector, must determine that:

(i) The construction is defective in workmanship, material or equipment, or

(ii) The dwelling or unit has not been built in substantial compliance with the approved drawings and specifications, or

(iii) The dwelling or unit does not comply with the FmHA construction standards in effect at the time the loan was approved or the conditional commitment was issued, or

(iv) The property does not meet code requirements.

(2) The claim must be for one or more of the following:

(i) To pay for repairs;

(ii) To compensate the owner for repairs;

(iii) To pay emergency living or other expenses resulting from the defect; or

(iv) To acquire title to property.

(3) The dwelling or unit must be newly constructed as defined in § 1924.253 of this subpart and financed with an insured Section 502 RH loan.

(4) The claim seeking compensation from FmHA must be filed with FmHA within 18 months after the date financial assistance is granted. Defects for which claims are filed beyond the 18-month period must have been documented by FmHA in the borrower's case file or on the form designated by FmHA (available in any FmHA office), prior to expiration of the 18-month period. For loans made to construct a new dwelling or erect a new manufactured housing unit, financial assistance is granted on the date of final construction inspection and acceptance by the borrower and FmHA. Claims must be submitted by completing the designated form (available in any FmHA office).

(5) Any obligation of the contractor to correct the defect(s) under a contractor's warranty must have expired, or the contractor is responsible for making corrections under the contractor's

warranty but is unable or unwilling to do so.

(b) Subsequent owners of eligible dwellings or units who are also Section 502 borrowers may be eligible to receive compensation for construction defects. These owners will be notified in accordance with § 1924.258 of this subpart. However, the claim for compensation must be filed in accordance with paragraph (a)(4) of this section within the 18-month period established for the original rural housing (RH) borrower.

§ 1924.266 Purposes for which claims may be approved.

(a) *Eligible purposes.* A claim may be approved to:

(1) Pay, or reimburse the borrower for costs already paid, to repair major structural defects which are completed in accordance with plans and specifications approved by FmHA. Repairs must be made by a reputable licensed contractor and a warranty covering the repairs will be issued by the contractor when the repairs are completed, as prescribed in Subpart A of this part. Payment will be based on actual cost of the development and the borrower must provide evidence to reasonably establish the development cost. Workmanship and materials used in repairs must be consistent with the level of quality specified in the original dwelling or unit specifications and/or comparable to the items being replaced. Payment may be made:

(i) to cover damages which are a direct result of the defect to permanent enhancements made, such as landscaping, completion of unfinished living spaces, etc., of the dwelling or unit, installation or set-up of the unit, or related facilities, and

(ii) for costs approved by FmHA for professional reports by engineers, architects or others needed to determine cause of or means to repair the defect.

(2) Reimburse the borrower for funds expended for emergency repairs. Emergency repairs are those repairs necessary to preserve the integrity of the structure, to prevent damage or further damage to personal property or fixtures in the dwelling or unit and related facilities, or to prevent or eliminate immediate health hazards. Receipts or other evidence of borrower's expenditures must be provided.

(3) Acquire title to the property by the Government and, when appropriate, compensate the claimant for any loss of borrower contribution at the time the loan was closed. Conveyance of properties under this section will be handled in accordance with subpart A of part 1955 of this chapter.

(i) Before FmHA accepts a conveyance, the borrower must attempt to sell the dwelling or unit in accordance with subpart C of part 1965 of this chapter, if the dwelling or unit is considered decent, safe and sanitary as prescribed in subpart C of part 1955 of this chapter. If the property is sold, FmHA will:

(A) Pay the borrower's relocation expenses, including temporary living expenses as prescribed in paragraph (a)(4) of this section, until another suitable property can be located;

(B) Pay related sales expenses, as prescribed in subpart C of part 1965 of this chapter, if the property is sold for less than the debt against it;

(C) Release the borrower from personal liability for the remaining FmHA debt; and

(D) Process an application for a new RH loan if the borrower so desires and is still eligible for FmHA assistance.

(ii) If the dwelling or unit is not considered decent, safe and sanitary as prescribed in subpart C of part 1955 of this chapter, FmHA should accept a voluntary conveyance of the property under the provisions of subpart A of part 1955 of this chapter. Compensation for properties taken into inventory under this paragraph may not exceed the difference between the present market value of the security as established by the appraisal when the loan was made and the amount of the FmHA loan and any prior liens.

(iii) A borrower contribution which may be compensated for under this paragraph may be such things as:

(A) A borrower's land or cash contribution,

(B) Development work done by the borrower under the self-help program or borrower method of construction, the cost of which was not included in the loan funds,

(C) Attorney fees, abstract costs or title insurance costs actually paid by the claimant in connection with closing the loan.

(4) Pay or reimburse the borrower for temporary living expenses, miscellaneous expenses, storage of household goods and moving expenses incurred as a result of the defect.

(i) Payment under this paragraph may be made under either of the following circumstances:

(A) The property is acquired by the Government in accordance with subpart A of part 1955 of this chapter and FmHA determines that the dwelling is not habitable and the severity of the defect(s) prevents the property from being repaired and made suitable as a permanent residence for the borrower.

(B) The property is not acquired by the Government but FmHA determines that the dwelling is not habitable or must be vacated in order to repair the defects.

(ii) Claims for compensation under paragraph (a)(4) of this section are limited as follows:

(A) Compensation may be granted for temporary living expenses for not more than 45 calendar days per claim unless a longer period is authorized by FmHA. Compensation will be paid for actual cost to the claimant not to exceed the Government per diem rate for the area where the borrower's dwelling or unit is located. Reimbursement may be claimed for expenses such as food, lodging, laundering, etc., which would not have been incurred had the claimant remained in the house.

(B) Compensation may be granted for actual miscellaneous expenses not to exceed $500 to cover such items as utility connect and disconnect fees.

(C) Compensation may be granted for moving and storage expenses not to exceed $5,000 unless authorized by FmHA and not to exceed the actual cost of moving the claimant household with personal belongings a distance of not more than 50 miles from the original residence. Compensation for storage expenses may not exceed that amount paid to store household furnishings for 45 days.

(D) A strict accounting of the use of such funds must be maintained by the borrower and will be verified by FmHA.

(5) Compensate the claimant for reasonable interest paid on loans obtained for the sole purpose of correcting structural defects or other approved purposes under this section.

(b) *Ineligible purposes.* Compensation will not be granted for:

(1) Completion of a dwelling or unit or installation of materials/items required under the construction contract and/or specifications.

(2) Defective items which were not completed under the contract method or under the conditional commitment and supported by a builder's warranty. Work performed under the borrower method or self-help program without a warranty by a responsible party is not eligible for compensation.

(3) Damage caused by defective design, workmanship, or material in making enhancements to or remodeling the dwelling or unit or related facilities which were not financed or approved by FmHA.

(4) The loss of past, present or future wages or salary directly or indirectly resulting from the defect.

(5) Treatment for physical or psychological damages including medical and dental claims.

(6) Death benefits or funeral expenses.

(7) Damages encountered as a result of war, civil disorder, flood, tornado, lightning, earthquake or acts of nature which the structure was not designed to withstand.

(8) Damages resulting from the homeowner's negligence or failure to properly maintain the property.

(9) Damage to personal property.

§§ 1924.267–1924.270 [Reserved]

§ 1924.271 Processing applications.

An application for compensation for construction defects shall be submitted by the claimant to FmHA on the designated form (available in any FmHA office). The application shall be completed in its entirety. All structural defects and claims for which compensation is sought will be listed. Borrowers will be told not to incur any expenses for repairs or temporary living expenses, except for emergency situations, until funds have been allocated and the request has been approved under § 1924.273 of this subpart.

§ 1924.272 [Reserved]

§ 1924.273 Approval or disapproval.

(a) Claimants will be notified in writing of the decision on the claim within 60 days of the date the designated form (available in any FmHA office) is signed by the borrower. If the claim or any part of the claim is denied at any level, the claimant will be informed in writing of the reason(s) for the denial and advised of appeal rights in accordance with subpart B of part 1900 of this chapter.

(b) [Reserved]

§ 1924.274 Final inspection.

Except for emergency repairs, all repair work must be performed in accordance with subpart A of this part. In all cases, FmHA will make a final inspection of the repair work performed before final payment is made for the work.

§ 1924.275 [Reserved]

§ 1924.276 Action against contractor.

If FmHA pays for correction of construction defects which are the responsibility of the contractor, debarment proceedings will be initiated against the contractor in accordance with subpart M of part 1940 of this chapter (available in any FmHA office), even if the contractor has gone out of business, declared bankruptcy, cannot be located, etc. The debarment will be pursued in both the contractor's company name and the principal parties as individuals, and any successor entities, if known. If the manufacturer of the defective product is determined to be solely responsible, no action will be taken against the contractor. In such a case, debarment will be initiated against the manufacturer. An assignment of the borrower's claim against the contractor or other party will be obtained if it appears to the approval officials, with any necessary advice from the Office of the General Counsel, that recovery is reasonably possible.

§§ 1924.277–1924.299 [Reserved]

§ 1924.300 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0082. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 2 hours per response, with an average of .28 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0082), Washington, DC 20503.

PART 1955—PROPERTY MANAGEMENT

3. The authority citation for part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

4. Section 1955.10 is amended by adding a new last sentence to the introductory text for the section to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * For newly constructed SFH properties with major construction defects, see subpart F of part 1924 of this chapter.

* * * * *

Dated: July 15, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–19225 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8352]

RIN 1545–AK26

Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary and final regulations.

SUMMARY: This document contains corrections to temporary and final regulations published in the **Federal Register** for Thursday, June 27, 1991, at page 29432 (56 FR 29432). The regulation relates to the use of certain corporate tax attributes under sections 382 and 383 of the Internal Revenue Code of 1986 that are attributable to the period preceding an ownership change of the corporation.

FOR FURTHER INFORMATION CONTACT: Lori J. Jones (202) 566–3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These regulations were added to part 1 of title 26 of the Code of Federal Regulations "CFR" under sections 382 and 383 of the Code.

Need for Correction

As published, the regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of this regulation which was the subject of FR Doc. 91–15026, is corrected as follows:

1. On page 29432, column 3, in the preamble under the heading "Supplementary Information", line 5 from the top of the column, the number "0123" is corrected to read "1120".

2. On page 29432, column 3, the second full paragraph from the top of the column, the last line above the heading "Background", the language "Washington, DC 20224." is corrected to read "Washington, DC 20224, and the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.".

§ 602.101 [Corrected]

3. On page 29435, column 1, the last line of instructional paragraph 15, under the heading "§ 602.101 [Amended]", the number "0123" is corrected to read "1120".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–18643 Filed 8–13–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 31

[T.D. 8354]

RIN 1545-AP62

Membership in a Retirement System—State and Local Government Employees; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations published in the **Federal Register** for Friday, June 28, 1991, at page 29567 (56 FR 29567). The final regulation contains rules for determining whether an employee of a State or local government entity is a member of a retirement system of that entity for purposes of determining whether the employee's wages are subject to tax under the Federal Insurance Contribution Act (FICA).

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg (202) 377–9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This final regulation reflects the enactment of section 3121 (b) (7) (F) by section 11382 of the Omnibus Budget Reconciliation Act of 1990.

Need for Correction

As published, the final regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation which was the subject of FR Doc. 91–15380, is corrected as follows:

§ 31.3121 [Corrected]

1. On page 29573, column 2, under § 31.3121(b)(7)–2, paragraph (d)(2)(iii)(D), line 1, the language "(d)(2)(iii)(D) are illustrated by the" is corrected to read "(d)(2)(iii)(D) is illustrated by the".

2. On page 29573, column 2, under § 31.3121(b)(7)–2, paragraph (d)(3)(i), Example 2, line 3 from the bottom of the example, the first word in that line "of" is corrected to read "or".

Dale D. Goode,

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FR Doc. 91–18640 Filed 8–13–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 52

[T.D. 8356]

RIN 1545–AP83

Excise Tax on Chemicals That Deplete the Ozone Layer; Special Rule for Floor Stocks Tax Imposed in 1991

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the floor stocks tax on chemicals that deplete the ozone layer. These temporary regulations amend temporary regulations that were published on January 2, 1991, to reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1990. These temporary regulations affect persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1 of 1991, 1992, 1993, and 1994. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Environmental Tax Regulations (26 CFR part 52) relating to section 4682 of the Internal Revenue Code. Section 4682 was added to the Code by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and amended by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). Temporary regulations relating to this section (as originally enacted) were published in the **Federal Register** for September 6, 1990. Temporary regulations relating to this section (as amended) were published in the **Federal Register** for January 2, 1991. This document amends those temporary regulations to reflect comments submitted in response to the Notices of Proposed Rulemaking that cross-referenced those temporary regulations.

Need for Temporary Regulations

Immediate guidance is needed on the floor stocks tax imposed with respect to ozone-depleting chemicals. Therefore, good cause is found to dispense with the public notice requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Additions to List of Ozone-Depleting Chemicals

Section 4681 imposes a tax on ozone-depleting chemicals (ODCs). The Omnibus Budget Reconciliation Act of 1990 expanded the list of ozone-depleting chemicals by adding carbon tetrachloride, methyl chloroform, CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, and CFC–217 (post-1990 ODCs). Temporary regulations published in the **Federal Register** for January 2, 1991, reflected the addition of post-1990 ODCs to the list of taxed chemicals.

Floor Stocks Tax

Section 4682(h) imposes a floor stocks tax on January 1 of 1990, 1991, 1992, 1993, and 1994. The regulations published September 6, 1990, provided that no floor stocks tax is imposed on January 1, 1991, 1992, 1993, and 1994 on an ODC that has been mixed with any other ingredients if it is established that the other ingredients contribute to the accomplishment of the purpose for which the mixture will be used. The regulations published January 2, 1991, however, modified this rule by providing a special rule for certain stabilized or inhibited ODCs. Under the regulations published January 2, 1991, floor stocks tax is imposed on ODCs that have been mixed with stabilizing or inhibiting agents and not with other ingredients. Thus, for example, methyl chloroform that has been stabilized to prevent chemical reactions during transportation

or use is subject to the floor stocks tax on January 1, 1991, unless it also has been mixed with other ingredients that contribute to the accomplishment of the purpose for which the mixture will be used.

In order to provide a period of public notice before the special rule for stabilized or inhibited ODCs becomes effective, these temporary regulations change its effective date to January 1, 1992.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that cross-references to these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

List of Subjects in 26 CFR Part 52

Excise taxes, Chemicals, Petroleum.

Adoption of Amendments to the Regulations

Accordingly, title 26, part 52 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for part 52 continues to read in part:

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

Par. 2. Section 52.4682–4T is amended by revising paragraph (b)(2)(i)(B)(*2*) to read as follows:

§ 52.4682–4T Floor stocks tax (temporary).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * *

(*2*) *Exception.* In the case of a floor stocks tax imposed on or after January 1, 1992, a mixture is not exempt from floor stocks tax under this paragraph (b)(2)(i)(B) if it contains only ODCs and one or more stabilizing or inhibiting agents.

* * * * *

Fred T. Goldberg, Jr.
Commissioner of Internal Revenue.
Approved: July 11, 1991.
Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91–18642 Filed 8–13–91; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1520–91]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends 28 CFR part 44, which implements the prohibitions against certain unfair immigration-related employment practices enacted by section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b). These amendments to the regulations are necessary because of the modifications to section 102 of IRCA which were enacted by the Immigration Act of 1990, Public Law No. 101–649, 104 Stat. 4978.

DATES: The interim rule is effective August 14, 1991. Written comments must be submitted on or before October 15, 1991.

ADDRESSES: Please submit written comments to the Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490.

Comments received will be available for public inspection in suite 800, 1100 Connecticut Avenue, NW., Washington, DC, from 9 a.m. to 5:30 p.m., Monday through Friday, except federal holidays, until October 15, 1991. Copies of this regulation are available on tape for those with impaired vision.

FOR FURTHER INFORMATION CONTACT: Andrew M. Strojny, Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490, telephone (202) 653–8121 (Voice) or (202) 296–0168 (TDD number for the hearing impaired); or Kirk M. Flagg, Trial Attorney, Office of Special Counsel for Immigration Related Unfair Employment Practices, (202) 653–8121 (Voice) or (202) 296–0168 (TDD).

SUPPLEMENTARY INFORMATION:

Background and Reasons for the Amendments

On November 6, 1986, Congress enacted the Immigration Reform and Control Act of 1986 ("IRCA"). Section 102 of IRCA (8 U.S.C. 1324b) protects United States citizens, nationals, and aliens authorized to work in the United States from discrimination on the basis of national origin. It also protects from discrimination on the basis of citizenship status United States citizens, nationals, and certain work-authorized aliens, who were previously denominated "intending citizens" and are now denominated "protected individuals."

On October 6, 1987, a final rule establishing standards and procedures for enforcing section 102 of IRCA was promulgated at 28 CFR part 44. See 52 FR 37402. Subsection 44.101(c)(2)(ii) of 28 CFR was later amended on November 30, 1988. See 53 FR 48248.

On November 29, 1990, the President signed into law the Immigration Act of 1990, Public Law No. 101–649, 104 Stat. 4978, ("Act") which, among other things, amended section 102 of IRCA. These amendments to section 102 of IRCA necessitate corresponding amendments to the implementing regulations at 28 CFR part 44.

Extension of Protection to SAWs

Section 532(a) of the Act added Special Agricultural Workers and Replenishment Agricultural Workers to the definition of temporary residents who are protected from discrimination on the basis of citizenship status. See Public Law No. 101–649, 104 Stat. 4978, 5054 (8 U.S.C. 1324b(a)(3)(B)(i)). Section 532(b) provides that Section 532(a) shall apply to actions occurring on or after November 29, 1990.

Elimination of Declaration of Intention

Section 533(a) of the Act eliminated the requirement that aliens complete a form declaring their intention to become a United States citizen in order to assert a claim of citizenship status discrimination. See Public Law No. 101–649, 104 Stat. 4978, 5054–55 (8 U.S.C. 1324b(a)). This change applies to unfair immigration-related employment practices occurring before, on, or after November 29, 1990. See section 533(b), Public Law No. 101–649, 104 Stat. 4978, 5055 (8 U.S.C. 1324b(a)).

This interim rule retroactively removes the filing of the Declaration of Intention form (INS form N–315) and the

Declaration of Intending Citizen form (INS form I–772) as elements under the definition of a "charge," 28 CFR 44.101(a)(7)(ii), and under the definition of an "intending citizen," which the amendments now redesignate as "protected individual." 28 CFR 44.101(c)(2)(ii).

This retroactive elimination of the Declaration of Intention filing requirement under section 533(a) of the Act and under 28 CFR part 44 applies to all charges filed with the Office of Special Counsel as well as to all complaints filed with the Office of the Chief Administrative Hearing officer. See *Ryba* v. *Tempel Steel Co.*, Final Decision, OCAHO Case No. 90200206 (ALJ McGuire, January 23, 1991). Moreover, all citizenship status discrimination charges pending with the Office of Special Counsel on November 29, 1990 that were deemed incomplete solely because no form declaring an intention to become a citizen had been filed are deemed complete as of November 29, 1990, as long as the time for completing the charge, as defined by 28 CFR 44.301(d)(2), had not expired before that date.

Anti-Retaliation

Section 534 of the Act bars retaliation against those seeking to enforce their rights under section 102 of IRCA. Public Law No. 101–649, 104 Stat. 4978, 5055 (8 U.S.C. 1324b(a)(5)). This change applies to actions occurring on or after November 29, 1990.

The Office of Special Counsel's regulations, codified at 28 CFR 44.201, already included an anti-retaliation provision which covers all actions occurring after the regulation's publication on October 6, 1987. The legislative history of section 534 of the Act makes it clear that Congress intended to codify this antiretaliation regulation which implements the Office of Special Counsel's interpretation of section 102 of IRCA. See H.R. Rep. No. 955, 101st Cong., 2d Sess. 82–83 (1990). This rule amends the existing regulation by recodifying § 44.201 as paragraph (a)(3) of § 44.200, and by correcting minor language differences between § 44.201 and section 534 of the Act.

Documentation Abuses

Section 535 of the Act prohibits an employer from asking an individual for more or different documents than are required to satisfy the employment verification provisions of 8 U.S.C. 1324a, or from refusing to honor documents tendered that on their face reasonably appear to be genuine. See Public Law No. 101–649, 104 Stat. 4978, 5055 (8 U.S.C. 1324b(a)(6)). This change applies to actions occurring on or after November 29, 1990.

Section 536(a) provides for civil fines of not less than $100 and not more than $1000 for each individual so discriminated against. See Public Law No. 101–649, 104 Stat. 4978, 5056 (8 U.S.C. 1324b(g)(2)(B)(iv)(IV)). The Conference Report accompanying the Act makes it clear that employers who engage in document abuse are subject to such fines. H.R. Rep. No. 955, 101st Cong., 2d Sess. at 133–134. In addressing fears that a pilot biometrics drivers' license provision, later deleted from the Act, would become the exclusive method of establishing work eligibility, the Report stated:

> This provision is not intended to be the exclusive means by which an individual may establish the individual's identity and authorization to work. In fact under section 535 of the Conference Report an employer who does not accept a document that reasonably appears to be genuine and that is among the list of documents that can be used to establish either identity or work authorization, or both, may be subjected to significant administrative fines.

H.R. Rep. No. 955, 101st Cong., 2d Sess. at 133–134.

Prior to enactment of the Act, existing Administrative Law Judge decisions had already made it clear that, at a minimum, subjecting aliens or citizens to more or different document requirements than those imposed on their citizen or alien counterparts violated section 102 of IRCA. *See generally Jones* v. *De Witt Nursing Home*, Final Decision and Order, OCAHO Case No. 88200202, (ALJ Morse, June 29, 1990); *United States* v. *Marcel Watch Corp.*, Final Decision and Order, OCAHO Case No. 89200085, (ALJ Morse, March 22, 1990); and *United States* v. *LASA Marketing Firms*, Amended Decision and Order, OCAHO Case No. 88200061, (ALJ Schneider, March 14, 1990). Thus, for example, it was unlawful for an employer to demand an Immigration and Naturalization Service (INS) document from individuals perceived to be aliens to satisfy INS employment verification requirements, while at the same time accepting all legally permissible documents from individuals perceived to be citizens. In addition, it violated section 102 of IRCA for employers to demand specific employment eligibility verification documents from U.S. citizens, while refusing to accept other legally sufficient documents which were tendered.

With enactment of the Act, Congress provided that employers were subject to fines regardless of whether the employer was disparately treating individuals on the basis of their citizenship status in the hiring process. Thus, an employer who demands that all individuals produce a driver's license and social security card, to the exclusion of any other acceptable documents, for employer verification purposes, has committed an unfair immigration-related employment practice in the form of document abuse, and is subject to a civil penalty for each and every individual so discriminated against.

Change in Filing Period

Section 537 of the Act changed the filing period for a charging party to file his own complaint. Instead of 90 days from the end of the Special Counsel's investigatory period, a charging party will have 90 days from his receipt of notice from the Special Counsel that the investigatory period is over or that the investigation is complete. See Public Law No. 101–649, 104 Stat. 4978, 5056 (8 U.S.C. 1324b(d)(2)). This change applies to actions occurring on or after November 29, 1990.

The amendments to part 44 of title 28 of the Code of Federal Regulations mirror the amendments to section 102 of IRCA. It has been the practice of the Office of Special Counsel to notify the charging party by certified mail that the investigatory period has ended. However, on occasion, this certified mail is returned unclaimed. In that situation, the Act would permit the charging party's filing period to continue on indefinitely because the end of the filing period is measured from the date on which notice is received. The Office of Special Counsel invites comments about how to count the time limit if there is no evidence when, if ever, the charging party received the notice.

Technical Corrections

This interim rule also makes technical corrections to the existing regulation by removing an unnecessary space in the word "inadequate," 28 CFR 44.301(d)(2); and by clarifying that a charging party's complaint must be filed according to the procedures established by the Office of the Chief Administrative Hearing Officer, 28 CFR 44.303(d)(1).

The Office of Special Counsel invites comments about the technical corrections because they are procedural amendments not made pursuant to the Act.

Justification for an Interim Final Rule

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for implementing this rule as an interim rule effective immediately, with provision for post-promulgation public comment. This rule merely amends 28 CFR part 44 to

conform with the changes that Congress made in IRCA, or makes technical corrections to current regulations. It is necessary that these amendments become effective immediately so that the standards and procedures for enforcing section 102 of IRCA are consistent with governing statutes.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule is unlikely to have a significant economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

List of Subjects in 28 CFR Part 44

Administrative practice and procedure, Aliens, Citizenship and Naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, 28 CFR part 44 is amended as follows:

PART 44—[AMENDED]

1. The authority citation for part 44 continues to read as follows:

Authority: 8 U.S.C. 1324b; 8 U.S.C. 1103(a).

2. In § 44.101 paragraphs (a)(7) and (c) are revised to read as follows:

§ 44.101 Definitions.

* * * * *

(a) * * *

(7) Indicates, if the injured party is an alien authorized to work, whether the injured party—

(i) Has been—

(A) Lawfully admitted for permanent residence;

(B) Granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1);

(C) Admitted as a refugee under 8 U.S.C. 1157; or

(D) Granted asylum under 8 U.S.C. 1158; and

(ii) Has applied for naturalization (and if so, indicates the date of the application);

* * * * *

(c) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States; or

(2) Is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or is granted asylum under 8 U.S.C. 1158. The status of an alien whose application for temporary resident status under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1) is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Immigration and Naturalization Service Legalization Office. As used in this definition, the term "protected individual" does not include an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, by May 6, 1987; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Immigration and Naturalization Service's processing of the application shall not be counted toward the two-year period.

* * * * *

3. Section 44.200 paragraph (a) is revised to read as follows:

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is unfair immigration-related employment practice for a person or other entity to knowingly and intentionally discriminate or to engage in a pattern or practice of knowing and intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual's national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(c), because of such individual's citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b of the Immigration Reform and Control Act of 1986 or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Documentation Abuses.* A person's or other entity's request, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b) of the Immigration Reform and Control Act of 1986, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

* * * * *

§ 44.201 [Removed]

4. Section 44.201 is removed.

5. Section 44.301 paragraph (d)(2) is revised to read as follows:

§ 44.301 Acceptance of charge.

* * * * *

(d) * * *

(2) Inadequate submissions that are later deemed charges under paragraph (c)(1) of this section are timely filed as long as—

* * * * *

6. Section 44.303 paragraphs (b), (c), and (d) are revised, and new paragraph (e) is added, to read as follows:

§ 44.303 Determination.

* * * * *

(b) When the Special Counsel decides not to file a complaint with respect to such charge before an administrative law judge within the 120-day period, or at the end of the 120-day period, the Special Counsel shall issue letters of determination by certified mail which notify the charging party and the respondent of the Special Counsel's determination not to file a complaint.

(c) When the charging party receives a letter of determination issued pursuant to § 44.303(b), indicating that the Special Counsel will not file a complaint with respect to such charge, the charging party, other than an officer of the Immigration and Naturalization Service, may bring his or her complaint directly before an administrative law judge within 90 days after his or her receipt of the Special Counsel's letter of determination. The charging party's complaint must be filed with an administrative law judge pursuant to the regulations issued by the Office of the Chief Administrative Hearing Officer codified at 28 CFR 68.1.

(d) The Special Counsel's failure to file a complaint with respect to such charge, before an administrative law

judge within 120 days shall not affect the right of the Special Counsel to continue to investigate the charge or to bring a complaint before an administrative law judge during the additional 90-day period as defined by paragraph (c) of this section.

(e) The Special Counsel may seek to intervene at any time in any proceeding brought by a charging party before an administrative law judge.

Dated: August 5, 1991

Dick Thornburgh,

Attorney General.

[FR Doc. 91-19188 Filed 8-13-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91-056]

Safety Zone Regulations: East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the East River, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m., 1 September 1991. It terminates at 10:30 p.m., 1 September 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. JENNINGS, project officer, Captain of the Port New York, and LT. JOHN B. GATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m. to 10:30 p.m. on 1 September 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

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

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new 165.T1056 is added to read as follows:

§ 165.T1056 Safety Zone: East River, New York.

(a) *Location.* The following area has been declared a Safety Zone: All waters of the Lower East River south of the Brooklyn Bridge, north of a line drawn between the Brooklyn Battery Tunnel ventilator on Governors Island and Pier 7 Brooklyn, and east of a line drawn between Brooklyn Battery Tunnel ventilator on Governors Island and Slip 7 Manhattan.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m., 1 September 1991. It terminates at 10:30 p.m., 1 September 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 30, 1991.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-19328 Filed 8-13-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-114]

Safety Zone Regulations: Kill Van Kull, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Bergen Point West Reach of the Kill Van Kull, New York and New Jersey. This zone will divide a portion of the channel at Bergen Point West Reach into two sections, a northern half and a southern half. In the northern half, concentrated drilling and blasting will be conducted and no vessel is permitted to transit that section. In the southern half, vessel passage is permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in the northern half of this section of the channel.

EFFECTIVE DATE: This regulation becomes effective at 5:01 p.m., 01 August 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

A regulation is being developed which will impose a regulated navigation area (RNA) over the entire Kill Van Kull, which includes this area. This final rule is necessary, as an interim measure, to adequately ensure vessel safety in the affected area until the RNA is published. When the RNA becomes effective this safety zone will be cancelled.

Drafting Information

The drafters of this regulation are LTJG C.W. JENNINGS, project officer, Captain of the Port New York, and LT J.B. GATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with blasting and dredging operations. This regulation is effective from 5:01 p.m., 01 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

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

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

Authority: 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new section 165.165 is added to read as follows:

§ 165.165 Safety Zone: Bergen Point West Reach, Kill Van Kull—New York and New Jersey

(a) *Location.* The following area has been declared a Safety Zone: All waters of Bergen Point West Reach, in the Kill Van Kull Channel, due east of a line drawn shore to shore along the 074°08'26.1" W. line of longitude and due west of a line drawn shore to shore along the 074°07'56.2" W. line of longitude. This area is marked by navigation buoys set by the Coast Guard.

(b) *Effective date.* This regulation becomes effective at 5:01 p.m., 01 August 1991.

(c) *Regulations.*

(1) Northern half of channel: No vessel may operate in the northern half of the channel within this zone. In accordance with the general regulations in § 165.23 of this part, entry into or movement within this area of the safety zone is prohibited unless authorized by the Captain of the Port.

(2) Southern half of channel:

(i) Each vessel transiting the southern half of the channel in this zone is required to do so at minimum wake speed.

(ii) No vessel shall enter this zone when they are advised by the drilling barge or Vessel Traffic Service New York (VTSNY) that a misfire or hangfire has occurred. Vessels already underway in the zone shall proceed to clear the area immediately.

(iii) Vessels, 300 gross tons or greater and tugs with tows, are prohibited from meeting or overtaking in this portion of the channel.

(iv) Vessels, 300 gross tons or greater and tugs with tows, transiting with the prevailing current are regarded as the stand-on vessel.

(v) Prior to entering this safety zone, the master, pilot or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the safety zone.

(vi) When tugboats have tows on a hawser, measured from the towing bit on the tug to the point where the hawser connects with the towed vessel, hawser length must not exceed 100 feet.

Dated: July 15, 1991.

R. M. Larrabee,

Captain U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–19327 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Buffalo Regulation 91–003]

Safety Zone Regulations: Presque Isle Bay, PA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone inside Presque Isle Bay approximately 500 feet north of the Erie Sand and Gravel Co. pier. The zone is needed to protect the barge anchored in the center of the safety zone and functioning as a platform for launching fireworks from a safety hazard associated with vessels transiting the area. It is also needed to protect spectator craft and other vessels from falling, burning debris. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 9 p.m. on 18 August 1991. It terminates on 18 August 1991 at 10 p.m. unless otherwise terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: MST2 Altman at (716) 846–4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential danger to the vessels involved.

Drafting Information

The drafters of this regulation are MST2 Altman, acting project officer for the Captain of the Port, and LCDR Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 9 p.m., 18 August 1991 and will conclude at 10 p.m., 18 August 1991. The event is a fireworks display from an anchored barge. A safety zone is needed to protect spectator craft and other vessels from falling, burning debris. It is also needed to ensure that the safety of the fireworks launching operation is not compromised by wakes and other hazards associated with transiting vessels.

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

Federalism

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary section § 165.T0930 is added to read as follows:

§ 165 T0930 Safety Zone: Presque Isle Bay, PA

(a) *Location.* The following area is a safety zone: A 500 foot radius around a barge anchored in position 42 deg 08.16 min N, 080 deg 05.42 min W.

(b) *Effective date:* This regulation becomes effective at 9 p.m., 18 August 1991 and terminates at 10 p.m., 18 August 1991 unless otherwise terminated or revised by the Captain of the Port.

(c) *Regulations:*

In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 24, 1991.

G.S. Cope,

Captain of the Port.

[FR Doc. 91–19329 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. NH; OAR-FRL-3982-4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Continuous Emission Monitoring Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision satisfies the requirement that a SIP contain provisions which require certain existing subject stationary sources to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions. The intended effect of this action is to approve the State's request to amend its SIP to incorporate continuous emission monitoring (CEM) requirements. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective September 13, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; and Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Patricia C. Kelling, (617) 565-3249; FTS 835-3249.

SUPPLEMENTARY INFORMATION: On December 11, 1989, the New Hampshire Air Resources Division (ARD) submitted revisions to its SIP for its continuous emission monitoring and recordkeeping regulations. These revisions consist of additions to chapter Env-A 800, Testing and Monitoring Procedures, of the New Hampshire Administrative Rules Governing the Control of Air Pollution entitled Env-A 802.09 "Continuous Emission Monitoring" and Env-A 802.10 "CEM Recordkeeping Requirements." On April 27, 1990 (55 FR 17758), EPA published a notice of proposed rulemaking (NPR) for these formal revisions to the SIP. EPA did not receive any adverse public comments. ARD was required to correct an error in a definition before final rulemaking. On February 12, 1991, the State submitted the corrected version of the definition as a formal SIP revision.

Pursuant to 40 CFR 51.214 and 40 CFR part 51 appendix P, the New Hampshire ARD submitted two regulations entitled "Continuous Emission Monitoring" and "CEM Recordkeeping Requirements." These regulations require the installation, operation, maintenance, and quality assurance testing of continuous emission monitoring equipment for many different types of facilities including those specified in 40 CFR 51, appendix P, paragraph 1.1. The regulations set forth minimum design specifications and audit requirements for CEM systems. The regulations also require recordkeeping for facilities using CEM systems and excess emission reporting.

Summary of SIP Revision

1. Env-A 802.09(a) provides definitions of the following terms: (1) Continuous Emissions Monitoring (CEM) System; (2) gaseous excess emission; and (3) opacity excess emission.
2. Env-A 802.09 (b) and (c) identify stationary sources subject to these CEM regulations.
3. Env-A 802.09 (d), (e) and (f) provide CEM procedures and specifications.
4. Env-A 802.09(g) provides CEM system audit requirements.
5. Env-A 802.09(h) provides procedures for submitting Excess Emission Reports by a source with a CEM system.
6. Env-A 802.09 (c) through (i) and 802.10 provide CEM Recordkeeping Requirements.

Final Action

EPA is approving sections Env-A 802.09 and Env-A 802.10 of the New Hampshire Administrative Rules Governing the Control of Air Pollution entitled "Continuous Emission Monitoring" and "CEM Recordkeeping Requirements," respectively.

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).

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

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

EPA has reviewed the revisions of this notice for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. Although New Hampshire submitted these SIP revisions prior to November 15, 1990, EPA has determined that this action is approvable. The revisions may not include all of the new title I requirements, however, they strengthen the requirements in New Hampshire's existing SIP and conform to all of EPA's current regulations. Furthermore, many of the provisions of the new law do not require State submittals until some time in the future. EPA is currently developing revised title I requirements and New Hampshire will adopt regulations meeting these new requirements and submit them in a separate submittal. EPA had decided to approve these revisions today in order to strengthen the SIP and conform it to existing requirements during this transition period.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: July 26, 1991.

Paul Keough,

Acting Regional Administrator, Region I.

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

Subpart EE—New Hampshire

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1520 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(41) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on February 12, 1991.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated February 12, 1991 submitting a revision to the New Hampshire State Implementation Plan.

(B) Env–A 802.09 and Env–A 802.10 of the New Hampshire Administrative Rules Governing the Control of Air Pollution entitled "Continuous Emission Monitoring" and "CEM Recordkeeping Requirements," respectively. These regulations were effective on December 27, 1990.

(ii) Additional materials.

(A) Nonregulatory portions of the State submittal.

3. Table 52.1525 is amended by adding the following entry. In the chart below the date approved by EPA and the **Federal Register** citation will be the publication date and citation of this document. Please complete the chart accordingly.

§ 52.1525 EPA-approved New Hampshire State regulations.

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	
Monitoring requirements	CH air 800	12/27/90	[Date revision is published in *FR*].	[*FR* citation from published date].	(c) (41)	Env–A 802.09 and Env–A 802.10.
*	*	*	*	*	*	

[FR Doc. 91–19083 Filed 8–9–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL 3979–5]

Approval and Promulgation of Implementation Plan; Texas

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: EPA is approving the stationary source volatile organic compound (VOC) regulation revisions associated with the Dallas-Fort Worth (DFW) initial Post-82 State Implementation Plan (SIP) and DFW Interim Post-82 SIP to the extent that they represent an improvement over the previously approved regulations.

EPA is also approving the commitments to the gasoline volatility program, the commitments related to the Inspection and Maintenance (I/M) Program, the commitments to the Transportation Control Measures (TCMs), the contingency provisions, and the schedules for the VOC regulation revisions and the I/M program submitted as part of the Post-82 Interim SIP. Texas is meeting the commitments and milestones outlined in the schedules which the decision to defer sanctions (February 9, 1989) was contingent upon. The proposed sanctions continue to be deferred, pending successful and timely completion of each of the commitments outlined in the Post-82 Interim SIP.

EPA is deferring action on the submitted pollution control strategy demonstration as a whole since the modeled required reduction reflected in the Interim SIP was based on a 1983 base year emission inventory which Texas is now in the process of updating as the initial step toward meeting the May 26, 1988, SIP call requirements.

EFFECTIVE DATE: This rule will become effective September 13, 1991.

ADDRESSES: Copies of the State submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region 6, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202; and the Texas Air Control Board, 6330 Highway 290 East, August, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Rebecca Caldwell, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–7214, (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, EPA proposed to disapprove the ozone (03) Post-1982 SIP revision that Texas had submitted under the Clean Air Act (the Act) for Dallas and Tarrant Counties (DFW) because the DFW SIP revision submitted by the State did not persuasively demonstrate timely attainment of the national ambient air quality standard (NAAQS) for 03. See 52 FR 26421 for further information. As a result of the proposed disapproval and the possibility of a construction ban which could result from a final disapproval, the Texas Air Control Board (TACB) developed a Post-1982 "Interim" SIP which was submitted to EPA by the Governor of Texas on December 21, 1987. Please refer to EPA's proposed action on the initial and Interim Post-82 SIPs which was published on February 9, 1989, at 54 FR 6302 for additional background information.

Additional SIP revisions will be required for the DFW area in accordance with the May 26, 1988, Post-87 SIP call. Texas has begun to meet the requirements of the May 26, 1988, Post-87 SIP call by committing to develop an emission inventory and to revise and adopt the Volatile Organic Compound (VOC) regulations in TACB Regulation V in accordance with EPA's guidance

document "Issues Relating to VOC Regulation Cutpoint, Deficiencies, and Deviations."

Under part A, section 110 of the Act, EPA is approving the stationary source VOC regulations and commitments in the initial and Interim Post-82 SIP because they are helpful steps toward attainment of the ozone standard in the DFW area. These regulations, however, do not represent Reasonable Available Control Technology (RACT) under part D, section 172 of the Act.

1. Stationary Source Regulation Revisions

The February 9, 1989 **Federal Register** notice proposed to approve the VOC regulations applicable to Dallas and Tarrant Counties as they appear after the October 14, 1988, TACB adoption which was submitted to EPA on December 13, 1988. EPA believes the last two sets of adopted VOC revisions (December 18, 1987 and October 14, 1988) create an overall set of rules that are much clearer, more enforceable, and more effective in reducing VOC emissions in Dallas and Tarrant Counties than were the previous versions. These revisions strengthen the SIP and are approvable under section 110 of the Act; however, EPA is not concluding that these rule revisions represent RACT in all cases and therefore, they do not meet the requirements for sources in ozone nonattainment areas as specified in part D of the Act.

In approving these revisions, EPA wishes to clarify the following six items:

Item 1. Texas has added provisions to certain Regulation V rules which apply to all counties affected by that particular rule rather than Dallas and Tarrant Counties only. Except as where noted below, EPA approves these additional provisions for Dallas and Tarrant Counties as well as the other affected counties even though this approval action is primarily for regulations adopted by Texas for the Dallas and Tarrant County Post-1982 SIP and Interim SIP. EPA extends its approval of these provisions for other counties because they (the provisions) merely clarify the current requirements of the SIP. For example, EPA approves the testing method and testing procedure provisions added by Texas which merely clarify EPA's long existing policy for source testing and impose no new regulatory requirements. Similarly, EPA approves a tighter limit on VOC emissions from filling of gasoline storage tanks used for motor vehicle refueling (§ 115.131(2)) which was adopted by Texas on October 14, 1988. Since compliance may be achieved and demonstrated by using and maintaining the vapor recovery system as outlined in the rule, without having to measure and compare actual emissions with the emission limit specified in the rule, the stricter emission limit is merely a clarification of the emissions expected from utilizing well operating vapor recovery equipment and should require no additional control measures beyond what is currently required by the SIP.

Item 2. EPA is approving the replacement of the current SIP version of § 115.191(8)(A) and (B) which specified automobile and light-duty truck surface coating emission limits to be complied with by December 31, 1982, and by December 31, 1986, respectively. These sections of the SIP will be replaced with the new § 115.191(a)(8)(A), which now specifies the more stringent emission limits which were previously approved by EPA as part of the SIP, and with the new § 115.191(a)(8)(B) and (C) which set emission limits and control standards for automobile refinishing operations. However, as discussed in the proposal notice, EPA is not approving the revised compliance date of December 31, 1987, for rule § 115.191(a)(8)(A). When EPA previously approved these same emission limitations, the limits were to be complied with by December 31, 1986. Therefore, the compliance date for those same emission limitations previously approved by EPA and found in the existing SIP version of § 115.191(8)(B), which is December 31, 1986, continues to apply. A new section of the Code of Federal Regulations, 40 CFR part 52 § 52.2301, is added to address this issue.

Item 3. In Texas' July 26, 1985, revisions to Regulation V for Dallas and Tarrant Counties, additional requirements were adopted for El Paso County. EPA's February 9, 1989, proposed approval notice did not address El Paso County. Therefore, as is noted in the rulemaking portion of this notice at 40 CFR part 52, § 52.2270(c)(69), certain of these revisions are not being approved as they apply to El Paso at this time. EPA anticipates approving these changes in the near future. The additional requirements are §§ 115.131 through 115.135, 115.171(6), 115.261 through 115.262, as adopted July 26, 1985; and 115.111(5), 115.131 through 115.135, as adopted October 14, 1988.

Item 4. A discrepancy exists between the current SIP regulation and the revisions adopted by Texas on July 26, 1985, December 18, 1987, and October 14, 1988, for §§ 115.111 through 115.113 and §§ 115.131 through 115.135. This discrepancy is whether or not these SIP rules should apply to Bexar County. On November 6, 1973, EPA promulgated a Federal Implementation Plan (FIP) at 40 CFR § 52.2285 which, among other things, applies RACT requirements to filling of gasoline storage vessels (Stage I) at motor vehicle fuel dispensing facilities, gasoline bulk plants, and gasoline loading terminals. Sections 115.111–115.113 and §§ 115.131–115.135 of the approved SIP apply RACT level controls to those facilities. The requirements of these SIP sections were as adopted by the TACB on March 20, 1979, and later approved by the EPA on November 10, 1982 (47 FR 50866) to apply to Bexar County. The FIP requirements were amended in that same notice (November 10, 1982) to state that the FIP requirements were preempted by the EPA approved Texas Regulation V §§ 115.111 through 115.113 and §§ 115.131 through 115.135. Texas later deleted Bexar from the applicability of these sections, but EPA has never approved the deletion of these rules from the SIP for Bexar County and must continue to enforce those requirements in Bexar County. Since the July 26, 1985, December 18, 1987, and October 14, 1988, revisions do not apply to Bexar County, EPA must continue to enforce the current SIP requirements, in Bexar County. Therefore, EPA is approving revisions to those §§ 115.111 through 115.113 for all applicable counties (Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties) with the exception of El Paso County, and EPA is also approving revisions to those §§ 115.131 through 115.135 for all applicable counties (Brazoria, Dallas, Galveston, Harris, and Tarrant Counties) with the exception of El Paso County. The current SIP version of §§ 115.111 through 115.113 and §§ 115.131 through 115.135 continues in effect for Bexar County unless and until TACB submits adequate technical justification for a SIP relaxation.

Item 5. EPA is approving revisions to the current SIP version of § 115.191(a). These revisions clarify the rule to allow daily weighted averaging of coating use and to require that coatings meet the emission limits as they are "delivered to the application systems" to ensure that any dilution VOC additions be included in the calculation. However, EPA has found that the TACB interprets its surface coatings rules to allow cross-line averaging (i.e. not require line-by-line compliance). This was not EPA's understanding at the time the current SIP version of § 115.191 was approved nor is it EPA's current policy to allow cross-line averaging without a SIP revision. Therefore, it is EPA's position that cross-line averaging is not allowed

unless the specific case is submitted to EPA as a SIP revision request. Therefore, EPA is not approving these revisions to § 115.191(a) as RACT because they do not meet the requirements of part D of the Act. Instead, these revisions are being approved under part A, section 110.

Item 6. On July 26, 1985, TACB adopted revisions to §§ 115.261–115.264, Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks in Harris County, to add Dallas and Tarrant Counties to the list of applicable counties. The latter revisions on October 14, 1988, weakened the rule by deleting the standards for gasoline delivery tank vapor tightness found in § 115.262. TACB later became aware of this potential problem, and reinstated these vapor tightness standards on December 8, 1989. EPA anticipates that TACB will send this revision to EPA in the near future as a SIP revision request. Therefore, today EPA approves TACB's July 26, 1985, revisions to §§ 115.261–115.264 as they apply to Dallas and Tarrant Counties (El Paso excluded). EPA is taking no action on the October 14, 1988, revisions to § 115.262 since they weaken the rule.

In order for these rule revisions to be approved as RACT by EPA, a number of deficiencies must be corrected. For instance, these rules must satisfy EPA's guidance on applicability by having lower exemption levels or cutoffs so that smaller minor sources would be subject to the rule. Also, the rules must be written to require a source to continue compliance with a rule once it becomes subject to the requirements. Alternate test methods, alternate compliance methods, and other alternate requirements must be approved by EPA on a case by case basis. Also, as discussed in Item 6 above, the regulation must clearly require that compliance with the surface coating rules be on a line-by-line basis with cross-line averaging schemes being submitted to EPA as a SIP revision request. Furthermore, the compliance date for automobile and light-duty truck surface coating operations in § 115.191(a)(8) should be December 31, 1986. Therefore, EPA is not approving these specific rule revisions as RACT because they do not meet the requirements of part D of the Act. The rule revisions are being approved under part A, section 110, of the Act because they are a major improvement over previous versions.

EPA received public comment from the TACB and General Motors Corporation on the EPA requirement that TACB submit alternate test methods and alternate compliance methods to EPA for review and approval as SIP revisions. See February 9, 1989, **Federal Register** for details on EPA requirements.

TACB encouraged EPA to review alternate test and compliance methods, however, TACB did not believe a formal SIP revision for such changes was necessary when they had the expertise and integrity to evaluate alternate methods to ensure that SIP commitments and attainment demonstrations are not compromised. General Motors maintains that the State may issue an alternate method of control approval without EPA approval.

EPA agrees with the TACB that adaptations to alternative test methods be allowed for site specific situations without EPA approval. However, as written, Texas' alternative test method provision gives the Executive Director broader authority to approve any new test method even beyond minor modifications. Therefore, this alternative test method provision should be removed or revised to require EPA approval.

In order to ensure that any alternative control plans meet EPA's policies and guidelines and ensure that alternate means of controls (AMOC's) will be federally enforceable, Texas must submit AMOC's to EPA for approval as a SIP revision. TACB suggested that EPA could determine that the SIP is inadequate if it finds TACB's implementation of the SIP to be flawed. EPA feels that a formal determination of SIP inadequacy would take more of EPA and the TACB's resources than would the routine submittal of AMOC SIP revision requests for EPA approval since such a formal determination would be a SIP call to the Governor pursuant to section 110(a)(2)(H) of the CAA. Also, by the time EPA would make a formal determination that the SIP is inadequate, the source may have already purchased the control equipment or made the process changes necessary to comply with the AMOC and then discover that EPA disagreed with TACB's interpretation. Therefore, EPA approval of AMOC's should be stated clearly in the rule for both clarity to the enforcing agencies and the regulated public.

TACB also commented that EPA approval of all equivalent alternative methods is "technically unnecessary and administratively impractical." EPA agrees that there are cases when EPA approval of equivalent procedures or methods would not be necessary, such as allowance of alternative means of control where the control efficiency of the system is clearly specified.

In regard to the Court Decision cited by General Motors (*U.S.* v. *General Motors Corporation,* 702 F. Supp. 133 (N.D. TX. 1988), the Court concluded "If the EPA wants to reserve the right to approve AMOC's issued by the State, then the EPA knows how to say so and should say so through a SIP revision," EPA is, therefore, requiring TACB, in the May 26, 1988, SIP call, to revise rule 115.401 as well as rule 115.193(c)(6) to make it quite clear that EPA approval is required for these types of SIP revisions.

TACB also commented that the RACT requirements outlined in the February 9, 1989, **Federal Register** notice would be appropriate revisions during the development of Phase 2 of the Post-87 SIP revision process. However, EPA required Post-82 SIPs to include the control of minor sources for which Control Technique Guidelines (CTG) have been published, control of major non-GTG sources, and clear and enforceable regulations which should include all necessary compliance provisions such as recordkeeping methods and compliance testing. Therefore, EPA maintains that these RACT requirements must be submitted as part of Texas' response to the May 26, 1988, Post-87 SIP call Phase I. EPA will consider, however, the emission reductions achieved from these revisions as creditable reductions toward the attainment demonstrations in response to the May 26, 1988, Post-87 SIP call and the follow up Phase 2 Post-87 SIP call.

2. TCM Requirements

The February 9, 1989, **Federal Register** notice proposed to approve the TCM measures in the Post-82 Interim SIP for Dallas and Tarrant counties. The TCMs to be implemented include intersection signal improvements and travel demand management programs. EPA is approving these TCMs since these measures satisfy EPA's prior guidance on TCMs and Texas has committed in the SIP to implement these measures or others at a minimum reduction level of 20 percent per year in a five-year timeframe. No specific public comment was received regarding TCMs.

3. Commitments

EPA is approving the commitments proposed for approval in the February 9, 1989, **Federal Register** notice which include the I/M program and TCM commitments outlined in the Post-82 Interim SIP, the Post-82 Interim SIP contingency plan, the gasoline volatility program commitments, and the regulation revision and I/M schedule submitted as part of the Post-82 Interim

SIP because they are helpful steps toward attainment of the ozone standard in the DFW area.

Texas has met the above commitments thus far by obtaining additional legislative authority and funding to administer and expand the I/M program and meeting the milestones thus far outlined in the I/M and Regulation Revision schedule in the Post-82 Interim SIP. Texas requested a postponement of the I/M program start date from January 1, 1990, to April 1, 1990, in order to complete training of the Department of Public Safety (DPS) personnel and the existing inspectors. The postponement allowed more time for Texas to evaluate and approve the new exhaust analyzer specifications, which are based on specifications recently adopted by the State of California. EPA granted the postponement of the I/M program since the request was reasonable and necessary in order to have a quality program in the DFW area.

Texas has also met the commitments of the gasoline volatility program by adopting a rule for control of gasoline volatility in the DFW area for implementation in May 1990. EPA promulgated a national volatility control standard for gasoline on March 10, 1989. However, the Federal volatility control standard for Dallas and Tarrant counties was less stringent (a higher RVP) than the volatility level assumed in the Post-82 Interim SIP. Therefore, Texas is initiating a more stringent (lower RVP) local level volatility control to meet the commitment in the Post-82 Interim SIP. Normally, such a State provision would be preempted by EPA's Federal regulation pursuant to section 211(c)(4)(A) of the Act. However, section 211(c)(4)(C) of the Act provides that such a State control will not be preempted if it is approved as part of the SIP and is necessary to achieve the NAAQS. Texas has submitted documentation demonstrating that the more stringent standard is necessary to demonstrate attainment. EPA proposed approval of the Texas RVP program for the DFW area on April 30, 1990 (55 FR 18005). The State rule will become effective when EPA approves the RVP program and excepts it from Federal preemption.

Action

Under part A, section 110 of the Act, EPA is approving the stationary source VOC regulation revisions as they appear after the October 14, 1988, TACB adoption which was submitted to EPA on December 13, 1988, to the extent that they represent an improvement over the previously approved regulations; however, the rule revisions do not in all cases constitute RACT and are not being approved as RACT in accordance with part D, section 172, of the Act. EPA is also approving the I/M program and TCM commitments outlined in the Post-82 Interim SIP, the Post-82 Interim SIP contingency plan, the gasoline volatility program commitments, and the regulation revision and I/M schedule submitted as part of the Post-82 Interim SIP, because they are all helpful steps toward attainment of the ozone standard in the DFW area. EPA is deferring action on the control strategy as a whole since the modeled required reduction reflected in the Interim SIP was based on a 1983 base year emission inventory. Texas is now in the process of updating the emission inventory, as the initial step toward meeting the May 26, 1988, SIP call requirements. Additional SIP revisions will be required for the DFW area in accordance with the May 26, 1988, SIP call.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Agency has reviewed this request for revision of the federally approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

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

Dated: July 10, 1991.

William K. Reilly,

Administrator.

40 CFR part 52, subpart SS, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

PART 52—[AMENDED]

2. Section 52.2270 is amended by adding paragraph (c)(69) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(69) Revisions to the plan for attainment of the standard for ozone in Dallas and Tarrant Counties were submitted by the Governor on October 11, 1985, December 21, 1987, and December 13, 1988. EPA is approving these stationary source VOC regulations and commitments under part A, section 110 of the Clean Air Act. However, these regulations do not represent RACT under part D, section 172 of the Clean Air Act for numerous reasons, including cross-line averaging and director's equivalency determinations without first being submitted to and approved by EPA as a SIP revision.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board Regulation V (31 TAC chapter 115), Control of Air Pollution from Volatile Organic Compounds: Rules 115.111 introductory paragraph; 115.111(2)(E); 115.111(2)(F); 115.113 introductory paragraph, 115.113 last entry in table; except El Paso County for Rules 115.131 introductory paragraph, 115.132(6), 115.132(7), 115.135 introductory paragraph, and 115.135 second to last entry in table; 115.162 introductory paragraph only; 115.163(b)(2); 115.163(b)(3); 115.164(b) first paragraph only; 115.164(b)(3); 115.164(b)(4); 115.171(a); except El Paso County for Rule 115.171(b); 115.175(f); 115.176(a); 115.176(c); 115.191(9)(A)(iii); 115.191(9)(A)(iv); 115.191(9)(A)(v); 115.193(c)(3); 115.223; except El Paso County for Rules 115.261 undesignated heading, 115.261 introductory paragraph, 115.262(a), and 115.264; as adopted by the Texas Air Control Board on July 26, 1985. Rules 115.171(c); 115.171(d); 115.176(d); 115.193(c) first paragraph only; 115.193(c)(1); 115.193(c)(2); 115.193(c)(6); 115.193(d) first paragraph only; 115.193(e); 115.194; 115.201(b)(1); 115.202; 115.203(a); and 115.291 through 115.294 and the corresponding undesignated heading; as adopted by the Texas Air Control Board on December 18, 1987. Rules 115.111(4)(C); except El Paso County for Rule 115.111(5); 115.111(6); 115.111(7); 115.113 last entry in table; 115.131(2); except El Paso County for Rule 115.131(3);

115.131(4); 115.131(5); 115.132 introductory paragraph only; 115.132(2); 115.134(3); 115.135 last entry in table; 115.141(a); 115.141(b); 115.142(a) first paragraph; 115.142(b); 115.143(a); 115.143(b); 115.143(c); 115.144; 115.162(3)(B); 115.163(a); 115.163(c); 115.163(d); 115.164(b)(7); 115.171(e); 115.172(a) first paragraph only; 115.172(a)(1); 115.172(a)(3); 115.172(a)(4); 115.172(a)(5)(A); 115.172(a)(6); 115.172(a)(7); 115.172(b) first paragraph only; 115.172(b)(1); 115.173(a) first paragraph only; 115.173(a)(2); 115.173(a)(4)(A); 115.173(a)(4)(B); 115.173(a)(4)(E); 115.173(a)(6); 115.173(b) first paragraph only; 115.173(b)(2); 115.173(b)(4); 115.173(b)(5); 115.173(b)(10); 115.173(b)(11); 115.173(c); 115.174(a) first paragraph only; 115.174(a)(1(A); 115.174(a)(1)(B); 115.174(a)(1)(C); 115.174(a)(7); 115.174(a)(8); 115.174(a)(9); 115.174(b) first paragraph only; 115.174(b)(2); 115.174(b)(4); 115.174(b)(5); 115.174(c); 115.175(e); 115.175(g); 115.176(e); 115.191(a) first paragraph only; 115.191(a)(8)(A); 115.191(a)(8)(B); 115.191(a)(8)(C); 115.191(a)(9)(C); 115.191(a)(11); 115.191(b); 115.191(c); 115.192(a); 115.192(b); 115.192(c); 115.193(f); 115.201(a); 115.201(b) first paragraph only; 115.201(b)(2) through 115.201(b)(6); 115.201(c); 115.203(b); 115.221(a) first paragraph only; 115.221(a)(4); and 115.221(b); as adopted by the Texas Air Control Board on October 14, 1988.

(B) Revisions to the Texas Air Control Board General Rules (31 TAC chapter 101), rule 101.1, Definitions for: automobile refinishing; consumer-solvent products; as adopted by the Texas Air Control Board on December 18, 1987. Rule 101.1, Definitions for: architectural coating; automotive primer or primer surfacers (used in automobile refinishing); automotive wipe-down solutions; coating application system; delivery vessel/tank-truck tank; exempt solvent; flexographic printing process; non-flat architectural coating; packaging rotogravure printing; publication rotogravure printing; rotogravure printing; surface coating processes; transfer efficiency; and vapor balance system; as adopted by the Texas Air Control Board on October 14, 1988.

(C) The following portions of the Post-1982 Ozone Control Strategies Dallas and Tarrant Counties Texas State Implementation Plan Revisions (TX82SIP), as adopted by the Texas Air Control Board on December 18, 1987.

(*1*)(d) Emissions Tracking, page 56 (last paragraph), 57, and 58.

(*2*)(e) Regulation Review, pages 58–60.

(*3*)(a) Emissions Reductions and Growth Unaffected by This Plan, page 63 (first two full paragraphs).

(*4*)(e) Transportation Control Measures, pages 67–68.

(*5*)(4) Projection of Reasonable Further Progress (RFP), pages 71–72.

(*6*)(5) Contengency Plan, page 72.

(*7*)(a) Emissions Reductions and Growth Unaffected by This Plan, page 75.

(*8*)(e) Transportation Control Measures, pages 79–80.

(*9*)(4) Projection of Reasonable Further Progress (RFP), pages 83–84.

(*10*)(5) Contingency Plan, page 84.

(D) TX82SIP, appendix AG, Emission Reduction Commitments for Transportation Control Measures in Post-1982 SIP Areas, as adopted by the Texas Air Control Board on December 18, 1987.

(E) Texas Air Control Board Order No. 85–06, as adopted July 26, 1985.

(F) Texas Air Control Board Order No. 87–18, as adopted December 18, 1987.

(G) Texas Air Control Board Order No. 88–10, as adopted October 14, 1988.

(ii) Additional Material.

(A) A letter dated September 25, 1989, from Allen Eli Bell, Executive Director, Texas Air Control Board to Robert E. Layton Jr., P.E., Regional Administrator, EPA Region 6.

(B) TX82SIP, (c) Additional Control Technique Guidelines (CTGs), pages 48–49.

(C) TX82SIP, appendix AL, Transportation Control Measure Evaluation and Documentation of Highway Vehicle Data adopted by the Texas Air Control Board on December 18, 1987.

3. Section 52.2301 is added to read as follows:

§ 52.2301 Federal compliance date for automobile and light-duty truck coating, Texas Air Control Board Regulation V (31 TAC chapter 115), control of air pollution from volatile organic compound, rule 115.191(1)(8)(A).

(a) The requirements of section 110 of the Clean Air Act are not met regarding the final compliance date, as found in TACB rule 115.191(a)(8)(A), for the requirements of TACB Rule 115.191(a)(8)(A).

(b) TACB adopted revisions to rule 115.191(a)(8)(A) on October 14, 1988, and submitted them to EPA on December 13, 1988. Prior to the submittal, automobile and light-duty truck coating operations were to have complied with final control limits of § 115.191(a)(8)(B) of the federally approved State Implementation Plan (SIP), by December 31, 1986. In the December 13, 1988, submittal, the final control limits had been moved to § 115.191(a)(8)(A) and had been given a new extended compliance date of December 31, 1987. EPA does not recognize the later compliance data and retains the original compliance date for the final emission limits of December 31, 1986. The owner or operator of a automobile and light-duty truck coating operation shall comply with the requirements of TACB rule 115.191(a)(8)(A) no later than December 31, 1986.

[FR Doc. 91–19203 Filed 8–13–91; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 180

[PP8F3647/R1064; FRL–3936–1]

Pesticide Tolerances for Metsulfuron Methyl; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 90-6097 in the **Federal Register** of March 21, 1990 (55 FR 10456), EPA issued a final rule establishing tolerances for the combined residues of the herbicide metsulfuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate) in or on various agricultural commodities. An entry for hog kidney with a tolerance of 0.5 part per million (ppm) was inadvertently omitted from the codified text in 40 CFR 180.428(b), and this correction instates it.

EFFECTIVE DATE: This correction is effective August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H-7505C), 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: In the final rule on metsulfuron methyl in the **Federal Register** of March 21, 1990 (55 FR 10456), EPA made clear in the preamble of the document that a tolerance was being established for the kidney of hogs along with various other agricultural commodities. The tolerance was inadvertently dropped from the codified text of 40 CFR 180.428(b), and this document corrects that oversight by reissuing the tolerance for hog kidneys. As this document is correcting a previously issued tolerance, advance notice and public comment are not prerequisites to its issuance, and this correction is effective upon publication.

Dated: July 24, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR 180.428 is corrected in paragraph (b) in the table therein by adding and alphabetically inserting the tolerance for hogs, kidney, to read as follows:

§ 180.428 Metsulfuron methyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Hogs, kidney	0.5
* * * * *	

[FR Doc. 91-18969 Filed 8-13-91; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 8F3617 and FAP 8H5554/R1121; FRL-3929-9]

RIN 2070-AB78

Pesticide Tolerances for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the fungicide metalaxyl and its metabolites in or on sugar beet (tops) at 10.0 parts per million (ppm), sugar beet (roots) at 0.5 ppm, and for the feed additive tolerance of 5.0 ppm in sugar beet molasses. This regulation to establish the maximum permissible levels for residues of metalaxyl in or on the commodities was requested in petitions submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective August 14, 1991.

ADDRESSES: Written objections, identified by the document control number, (PP 8F3617 and FAP 8H5554/R1121), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 1991 (56 FR 24159), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP) 8F3617 and a feed additive petition (FAP) 8H5554 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide metalaxyl (N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine methylester) and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester in or on sugar beet (tops) at 10.0 ppm, sugar beet (roots) at 0.5 ppm, nongrass animal feeds group at 6.0 ppm, grass forage, fodder, and hay group at 2.0 ppm, legume vegetables (dry or succulent) group at 1.0 ppm, legume vegetables (foilage) at 10.0 ppm, and legume vegetable cannery waste at 11.0 ppm, and a food additive regulation for the same pesticide in or on molasses at 4.0 ppm resulting from application of the pesticide to the growing crop. Since then, Ciba-Geigy Corp. has petitioned the Agency to withdraw all proposed tolerances except for the sugar beet (tops at 10.0 ppm and roots at 0.5 ppm) and to increase the food additive regulation level for sugar beet molasses to 5.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule 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 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 24, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408(a) is amended in the table therein by revising the entry for sugar beet tops and by adding and alphabetically inserting a new entry for sugar beet roots, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
* * * * *	

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 186.4000(b) is amended in the table therein by adding and alphabetically inserting the feed commodity sugar beet molasses, to read as follows:

§ 186.4000 **Metalaxyl.**

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Sugar beet molasses	5.0
* * * * *	

[FR Doc. 91–18968 Filed 8–13–91; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Amendment G–95]

Submission of Paid Freight Bills/Invoices, Commercial Bills of Lading, Passenger Coupons, and Supporting Documentation Covering Transportation Services Under Cost-Reimbursement Contracts

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations (FPMR) by requiring agencies to ensure that contractors doing business with the U.S. Government under a cost-reimbursement contract (CRC) submit passenger coupons to the General Services Administration (GSA) for audit. Since a significant number of overcharges exist on CRC passenger bills, GSA has determined it to be in the Government's interest to have these bills sent to GSA so that an audit can be performed and the dollar overcharges recovered and returned to the U.S. Treasury. This submission requirement, which has been incorporated in a temporary regulation since 1989, is now being made a permanent part of the FPMR.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Terence A. Ryan, Acting Chief, Policy and Regulations Branch, Office of Transportation Audits, telephone 202–501–0183 or FTS 241–0183.

SUPPLEMENTARY INFORMATION: Previously, § 101–41.807–4 of the Federal Property Management Regulations specified only that agencies ensure contractors doing business with the U.S. Government under a cost-reimbursement contract submit paid freight bills, invoices, commercial bills of lading, and supporting documentation to GSA for audit. Temporary Regulation G–53, published in the **Federal Register** on April 20, 1989 (54 FR 15942), revised the submission policy to include GTR's and passenger coupons (Supplement 1 to Temp. Reg. G–53 (55 FR 32626) was issued to extend the expiration date to April 20, 1991.) No comments were received. This final rule makes the submission of passenger coupons a permanent requirement but eliminates the submission of GTR's [as part of this rule] since GTR's are forwarded to GSA routinely for audit.

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

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act [5 U.S.C. 605(b)], GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and are included in the report number 3090–0242, Documentation and Payment of Transportation Bills.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Railroads, Transportation.

Title 41, part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

Subpart 101–41.8—Transportation Disbursement Procedures

2. Section 101–41.807–4 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, passenger coupons, and supporting documentation covering transportation services by contracts under a cost-reimbursement contract.

(a) Agencies shall ensure that legible copies of paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and supporting documentation for transportation services, for the account of and on which the United States will assume freight and passenger charges, that were paid by a Federal agency's contractor under a cost-reimbursement contract and their first-tier subcontractors, under a cost-reimbursement contract, are submitted to GSA for audit.

(b) Agencies shall ensure that each prime contractor forwards legible copies of paid freight bills/invoices, CBL's passenger coupons, and supporting documentation, as soon as possible following the end of the month, in one package to the General Services Administration (FWATS), 18th and F Streets, NW., Washington, DC 20405. The shipment shall include the required documents for all first-tier subcontractors under a cost-reimbursement subcontract. If, however, the inclusion of the transportation documents for any such subcontractors in the shipment is not practicable, such documents are to be transmitted in a separate package.

* * * * *

Dated: July 17, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–18837 Filed 8–13–91; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–48

[FPMR Amendment H–181]

Utilization, Donation, or Disposal of Seized and Forfeited Drug Paraphernalia

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations to reflect the requirements of Public Law 99–570, the Anti-Drug Abuse Act of 1986, which requires drug paraphernalia seized and forfeited under 21 U.S.C. 857(c) to be delivered to the Administrator of General Services. The Administrator may order the paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities. This regulation sets forth GSA's policy and guidelines governing the utilization, donation, and disposal of such drug paraphernalia. It also reflects organizational and reference changes.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Stanley M. Duda, Director, Property Management Division (703–557–1240).

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

List of Subjects in 41 CFR Part 101–48

Government property management, Surplus Government property.

Accordingly, 41 CFR Part 101–48 is amended as follows:

PART 101–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

1. The authority citation for part 101–48 continues to read as follows:

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

2.–3. Section 101–48.001–3 is revised to read as follows:

§ 101–48.001–3 Eleemosynary institution.

Eleemosynary institution means a nonprofit institution organized and operated for charitable purposes whose net income does not inure in whole or in part to the benefit of shareholders or individuals and which shall have filed with the GSA National Capital Region a satisfactory statement establishing such status.

4. Section 101–48.001–10 is added to read as follows:

§ 101–48.001–10 Drug paraphernalia.

Drug paraphernalia means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Pub. L. 91–513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as:

(1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) Water pipes;

(3) Carburetion tubes and devices;

(4) Smoking and carburetion masks;

(5) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(6) Miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) Chamber pipes;

(8) Carburetor pipes;

(9) Electric pipes;

(10) Air-driven pipes;

(11) Chillums;

(12) Bongs;

(13) Ice pipes or chillers;

(14) Wired cigarette papers; or

(15) Cocaine freebase kits.

Subpart 101–48.1—Utilization of Abandoned and Forfeited Personal Property

5. Section 101–48.100 is revised to read as follows:

§ 101–48.100 Scope of subpart.

This Subpart 101–48.1 prescribes the policies and methods for utilization and transfer within the Government of forfeited or voluntarily abandoned personal property subject to the provisions of 40 U.S.C. 304f through m, and abandoned and other unclaimed property found on premises owned or leased by the Government subject to the provisions of 40 U.S.C. 484(m), which may come into the custody or control of any Federal agency in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, and Trust Territory of the Pacific Islands, or the Virgin Islands. Property in this category located elsewhere shall be utilized and transferred in accordance with the regulations of the agency having custody thereof. This subpart also governs seized and forfeited drug paraphernalia under the provisions of 21 U.S.C. 857(c).

6. Section 101–48.101–2 is amended by adding paragraph (d) to read as follows:

§ 101–48.101–2 Custody of property.

* * * * *

(d) GSA will direct the disposition of forfeited drug paraphernalia that is subject to the disposal provisions of 21 U.S.C. 857(c) by ordering such paraphernalia destroyed or by authorizing its use for law enforcement or educational purposes by Federal, State, or local authorities.

7. Section 101–48.101–4 is amended by revising paragraphs (a) and (c) to read as follows:

§ 101.48.101–4 Retention by holding agency.

(a) Subject to the limitations on certain types of passenger vehicles (see § 101–43.307–9), a Federal agency may retain and devote to official use any property in its custody that is forfeited other than by court decree or determined by the agency to be voluntarily abandoned. Large sedans and limousines may be retained by an agency and devoted to official use only if such retention is clearly authorized by the provisions of subpart 101–38.1.

* * * * *

(c) Except where otherwise specifically provided, any property that is retained by a Federal agency for official use under this subpart 101–48.1 shall thereupon lose its identity as forfeited or voluntarily abandoned property. When such property is no longer required for official use, it shall be reported as excess in accordance with § 101–43.304.

8. Section 101–48.101–5 is amended by revising paragraphs (a) introductory text, (a)(1), (c) introductory text, (d)(1), (d)(5), (d)(6), and (e) and by adding paragraph (d)(7) to read as follows:

§ 101–48.101–5 Property required to be reported.

(a) A Federal agency shall promptly report, in accordance with § 101–43.304, property in its custody that is forfeited other than by court decree or voluntarily abandoned and not desired for retention by that agency for its official use and property on which proceedings for

forfeiture by court decree are being started or have begun, except that:

(1) Reports shall be submitted to the GSA National Capital Region (mailing address: General Services Administration (3FBP–W), Washington, DC 20407) in lieu of being submitted to the GSA regional office for the region in which the property is located.

* * * * *

(c) In addition to the exceptions and special handling described in §§ 101–43.305 and 101–43.307, the following forfeited or voluntarily abandoned property need not be reported:

* * * * *

(d) * * *

(1) Controlled substances (as defined in § 101–43.001–3), regardless of quantity, condition, or acquisition cost, shall be reported to the Drug Enforcement Administration, Department of Justice, Washington, DC 20537;

* * * * *

(5) property seized by one Federal agency but adopted by another for prosecution under laws enforced by the adopting Federal agency shall be reported by the adopting agency to the extent and in the manner required by this Subpart 101–48.1;

(6) Lost, abandoned, or unclaimed personal property controlled by the provisions of 10 U.S.C. 2575 shall be disposed of as provided by 10 U.S.C. 2575 and regulations issued thereunder by appropriate authority; and

(7) Drug paraphernalia seized and forfeited under the provisions of 21 U.S.C. 857, which is not retained for official use by the seizing agency or transferred to another Federal agency under seizing agency authorities, or such drug paraphernalia retained for official use but no longer required by the agency, shall be reported on Standard Form 120 to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

(e) Property not required to be reported pursuant to this § 101–48.101–5 and not excepted or modified with respect to reporting pursuant to this § 101–48.101–5 shall be handled as set forth in § 101–43.305.

9. Section 101–48.101–6 is amended by revising paragraphs (a) and (d), redesignating paragraph (f) as paragraph (g) and revised, and adding a new paragraph (f) to read as follows:

§ 101–48.101–6 Transfer to other Federal agencies.

(a) Normally, the transfer of forfeited or voluntarily abandoned personal property shall be accomplished by submitting for approval a Standard Form 122, Transfer Order Excess Personal Property (see § 101–43.4901–122), or any other transfer order form approved by GSA, to the General Services Administration (3FBP–W), Washington, DC 20407, for approval.

* * * * *

(d) Transfers of forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages shall be limited to those for medicinal, scientific, or mechanical purposes or for any other official purposes for which appropriated funds may be expended by a government agency. Transfer orders shall be signed by the head of the requesting agency or a designee. Where officials are designed to sign, the General Services Administration (3FBP–W), Washington, DC 20407, shall be advised of designees by letter signed by the head of the agency concerned. No transfer order will be acted upon unless it is signed as provided herein.

* * * * *

(f) Transfer orders requesting the transfer of reportable forfeited drug paraphernalia shall be submitted to the General Services Administration, Property management Division (FBP), Washington, DC 20406, for approval. Transfers will not be approved unless the Standard Form 122 or other transfer document contains a certification that the paraphernalia will be used for law enforcement or educational purposes only.

(g) Any property transferred for official use under this Subpart 101–48.1, with the exception of drug paraphernalia, shall thereupon lose its identify as forfeited or voluntarily abandoned property. When no longer required for official use, it shall be reported as excess in accordance with § 101–43.304. Drug paraphernalia shall not lose its identity as forfeited property. When no longer required for official use, it shall be reported in accordance with § 101–48.101–5(d)(7).

10. Section 101–48.101–7 is amended by revising paragraph (a) to read as follows:

§ 101–48.101–7 Reimbursement and costs incident to transfer.

(a) Reimbursement upon transfer of personal property forfeited or voluntarily abandoned other than by court decree shall be in accordance with § 101–43.309–3.

* * * * *

11. Section 101–48.101–8 is amended by revising paragraph (a) to read as follows:

§ 101–48.101–8 Billing.

(a) Each holding agency shall be responsible for billing and collecting the costs of care and handling, as well as the fair value of property transferred to other agencies, when such reimbursement is required in accordance with § 101–43.309–3.

* * * * *

12. Section 101–48.101–9 is revised to read as follows:

§ 101–48.101–9 Disposition of proceeds.

Where reimbursement for fair value is to be made in accordance with § 101–43.309–3, the fair value proceeds shall be deposited in the Treasury to miscellaneous receipts or in the appropriate agency account by the transferor agency.

13. Section 101–48.102–2 is amended by revising paragraph (b) to read as follows:

§ 101–48.102–2 Reporting.

* * * * *

(b) Abandoned for other unclaimed property which, by the provisions of § 101–43.304, is not required to be reported and which is not otherwise transferred pursuant to subpart 101–43.3, shall be subject to the provisions of subpart 101–48.3.

14. Section 101–48.102–3 is revised to read as follows:

§ 101–48.102–3 Reimbursement.

Reimbursement of fair market value, as determined by the head of the finding or transferor agency, shall be required in connection with official use by the finding agency or transfer for official use of abandoned or other unclaimed property. Fair market value as used herein does not mean fair value as determined under § 101–43.309–3.

Subpart 101–48.2—Donation of Abandoned and Forfeited Personal Property

15. Section 101–48.201–2 is revised to read as follows:

§ 101–48.201–2 Establishment of eligibility.

Eleemosynary institutions desiring to obtain available distilled spirits, wine, and malt beverages shall submit GSA Form 18, Application of Eleemosynary Institution (see § 101–48.4902–18), to the General Services Administration (3FBP–W), Washington, DC 20407. The Office of Management and Budget Approval Number 3090–0001 has been assigned to this form.

16. Section 101–48.201–3 is revised to read as follows:

§ 101–48.201–3 Requests by institutions.

Eligible institutions desiring to obtain available distilled spirits, wine, and malt beverages shall show on the GSA

Form 18, Application of Eleemosynary Institution, the kind and quantity desired. The GSA National Capital Region will inform the eligible institution when these alcoholic beverages become available, request confirmation that the institution's requirement is current, and inform the institution that shipment will be initiated upon this confirmation.

17. Section 101–48.201–4 is revised to read as follows:

§ 101–48.201–4 Filling requests.

The GSA National Capital Region will authorize the seizing agency to fill such requests as the region may determine proper to ensure equitable distribution among requesting institutions.

18. Section 101–48.201–5 is revised to read as follows:

§ 101–48.201–5 Donation of lots not required to be reported.

Forfeited distilled spirits, wine, and malt beverages not required to be reported under § 101–48.101–5 may be donated to eleemosynary institutions known to be eligible therefor if the beverages are determined by the seizing agency to be suitable for human consumption. The holding agency shall promptly report these donations by letter to the General Services Administration (3FBP–W), Washington, DC 20407. This report shall state the quantity and type donated, the name and address of the donee institution, and date of the donation.

19. Section 101–48.202 is added as follows:

§ 101–48.202 Donation of forfeited drug paraphernalia.

(a) Forfeited drug paraphernalia for which there is no Federal utilization may be made available through State agencies, at the discretion of GSA, to State and local governments for law enforcement or educational purposes only. Donations will be made in accordance with part 101–44, except as otherwise provided in this subpart 101–48.2.

(b) All transfers of drug paraphernalia to the State agencies for donation to State and local governments shall be accomplished by use of SF 123, Transfer Order Surplus Personal Property (see § 101–44.4901–123). The SF 123 shall be accompanied by a letter of justification, signed and dated by the authorized representative of the proposed donee, setting forth a detailed plan of utilization for the property and certifying that the donee will comply with all Federal State, and local laws, regulations, ordinances, and requirements governing use of the property. The SF 123, with the letter of justification, shall be submitted for approval to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

(c) A State agency shall not pick up or store drug paraphernalia in its distribution centers. This property shall be released from the holding agency directly to the designated donee.

Subpart 101–48.3—Disposal of Abandoned and Forfeited Personal Property

20. Subpart 101–48.3 is amended by revising § 101–48.302(b), redesignating §§ 101–48.304, 101–48.305, 101–48.305–1 and 101–48.305–2 as §§ 101–48.305, 101–48.306, 101–48.306–1 and 101–48.306–2 and adding a new § 101–48.304 to read as follows:

§ 101–48.302 Distilled spirits, wine, and malt beverages.

* * * * *

(b) When reportable abandoned or forfeited distilled spirits, wine, and malt beverages are not retained by the holding agency, transferred to another agency, or donated to an eligible eleemosynary institution by GSA, the GSA National Capital Region will issue clearance to the agency which submitted the report as prescribed by § 101–48.101–5 for destruction of the distilled spirits, wine, and malt beverages. A record of the destruction showing time, place, and nomenclature and quantities destroyed shall be filed with papers and documents relating to the abandonment or forfeiture.

§ 101–48.304 Drug paraphernalia.

(a) When forfeited drug paraphernalia is neither utilized within any Federal agency in accordance with Subpart 101–48.1 nor donated in accordance with subpart 101–48.2, GSA will issue clearance to the reporting agency to destroy the items. The destruction shall be performed by an employee of the holding agency in the presence of two additional employees of the agency as witnesses to the destruction. A statement of certification describing the fact, manner, date, type, and quantity destroyed shall be certified to by the agency employee charged with the responsibility for that destruction. The two agency employees who witnessed the destruction shall sign the following statement which shall appear on the certification below the signature of the certifying employee:

"I have witnessed the destruction of the (list the drug paraphernalia) described in the foregoing certification in the manner and on the date stated herein:"

Witness	Date
Witness	Date

(b) The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency.

§ 101–48.305 Property other than distilled spirits, wine, malt beverages, firearms, and drug paraphernalia.

(a) Property forfeited other than by court decree or voluntarily abandoned, except distilled spirts, wine, malt beverages, firearms, and drug paraphernalia, which is not returned to a claimant, retained by the agency of custody, or transferred in accordance with subpart 101–48.1 may be released to the holding agency by the GSA National Capital Region for public sale, except as otherwise provided by law.

(b) Abandoned or other unclaimed property which is not retained by the holding agency, not transferred to another agency, or not required to be reported by the provisions of § 101–48.102, may be reported for sale to the appropriate selling activity at any time after title vests in the United States as provided in § 101–48.102–1.

(c) Voluntarily abandoned, abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, normally shall be sold by competitive bid as prescribed in § 101–45.304–1, subject to the same terms and conditions as would be applicable to the sale of surplus personal property. Voluntarily abandoned, abandoned, or other unclaimed property and forfeited property may be sold also by negotiation at the discretion of the selling agency but only under the circumstances set forth in § 101–45.304–2. Such property shall be identified by the holding agency as abandoned or other unclaimed, voluntarily abandoned, or forfeited property, and shall be reported for sale to the appropriate GSA regional office or to such other agency as otherwise is responsible for selling its surplus personal property unless specifically required by law to be sold by the holding agency.

§ 101–48.306 Disposition of proceeds from sale.

§ 101–48.306–1 Abandoned or other unclaimed property.

(a) Proceeds from sale of abandoned or other unclaimed property shall be deposited in a special fund by the finding agency for a period of 3 years. A former owner may be reimbursed for abandoned or other unclaimed property

which had been disposed of in accordance with the provisions of this subpart 101–48.3 upon filing a proper claim with the finding agency within 3 years from the date of vesting of title in the United States. Such reimbursement shall not exceed the proceeds realized from the disposal of such property less disposal costs and costs of the care and handling of such property as determined by the head of the agency concerned.

(b) Records of abandoned or other unclaimed property shall be maintained in such a manner as to permit identification of the property with the original owner, if known, when such property is offered for sale. Records of proceeds received from the sale of abandoned or other unclaimed property shall be maintained as part of the permanent file and record of sale until the 3-year period for filing claims has elapsed.

§ 101–48.306–2 Forfeited or voluntarily abandoned property.

Proceeds from sale of property which has been forfeited other than by court decree, by court decree, or which has been voluntarily abandoned, shall be deposited in the Treasury of the United States as miscellaneous receipts or in such other agency accounts as provided by law or regulations.

Dated: July 16, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–18835 Filed 8–13–91; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6867

[CA–940–01–4214–10; CACA 28292]

Partial Revocation of Public Land Order No. 2729 and the Secretarial Order Dated November 16, 1932; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Public Land Order No. 2729 and the Secretarial Order dated November 16, 1932, insofar as they affect 71.14 acres of lands in El Dorado County, California. The lands were withdrawn from the operation of the public land laws and the general mining laws for the Bureau of Reclamation's Nashville Reservoir Site and the Central Valley Project. The withdrawals are no longer needed for the purpose for which they were withdrawn. This action will allow the completion of a proposed exchange between the Bureau of Land Management and the American River Land Trust.

EFFECTIVE DATE: September 13, 1991.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916–978–4820.

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

1. Public Land Order No. 2729, which withdrew lands from the operation of the public land laws and the United States mining laws for the Central Valley Reclamation Project, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 9 N., R. 10 E.,
Sec. 12, all public land in W½ lot 15, lot 16, MS 6303, and all public land in SE¼SW¼;
Sec. 13, all public land in lot 7.

2. The Secretarial Order dated November 16, 1932, which withdrew lands for the Nashville Reservoir Site, is revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 9 N., R. 10 E.,
Sec. 12, all public land in W½ lot 15, and lot 16.

The areas described in paragraph 1 and 2 above aggregate 71.14 acres in El Dorado County.

3. At 10 a.m. on September 13, 1991, the lands described will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on September 13, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on September 13, 1991, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 5, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–19278 Filed 8–13–91; 8:45 am]

BILLING CODE 4310–40–M

43 CFR Public Land Order 6868

[OR–943–4214–10; GP1–166; OR–16124]

Withdrawal of National Forest System Lands for Steamboat Creek Tributaries Streamside Zone and Steamboat Creek Roadside and Streamside Zones; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,400 acres of National Forest System lands in the Umpqua National Forest from mining for a period of 20 years for use by the Forest Service for the Steamboat Creek Tributaries Streamside Zone and Steamboat Creek Roadside and Streamside Zones. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

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

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. chapter 2), but not from leasing under the mineral leasing laws, to protect the Forest Service's roadside and streamside zones:

Willamette Meridian

Umpqua National Forest

Steamboat Creek Tributaries Streamside Zone

A strip of land 660 feet in width being 300 feet on each side of and running parallel and concentric with the centerlines of Cedar Creek, South Fork Cedar Creek, North Fork Cedar Creek, Little Rock Creek, Fugowee Creek, Tributary B, and Tributary B–1 through the following described subdivisions:

T. 24 S., R. 1 E.,
- Sec. 2, lots 3 and 4, S½NW¼, SW¼, and S½SE¼;
- Sec. 3, lots 3 and 4, S½N½, NE¼SW¼, and N½SE¼;
- Sec. 11, N½NE¼;
- Sec. 12, NW¼NE¼, S½NE¼, W½, and N½SE¼;
- Sec. 22, SE¼;
- Sec. 23, SW¼SW¼;
- Sec. 25, SW¼NE¼, S½NW¼, N½S½, and S½SE¼;
- Sec. 26, N½, and S½SE¼;
- Sec. 27, NE¼NE¼;
- Sec. 35, N½NE¼;
- Sec. 36, N½N½ and S½NE¼.

A strip of land 660 feet in width being 330 feet on each side of and running parallel and concentric with the centerlines of Canton Creek, Steelhead Creek, North Fork Steelhead Creek, South Fork Steelhead Creek, Deep Creek, and Singe Creek through the following described subdivisions:

T. 25 S., R. 1 E.,
- Sec. 11, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
- Sec. 14, W½E½, E½W½, and W½SW¼;
- Sec. 15, NE¼SW¼, N½SE¼, and SE¼SE¼;
- Sec. 23, W½E½ and E½W½;
- Sec. 25, NW¼NE¼, S½NE¼, NW¼SW¼, and NE¼SE¼;
- Sec. 26, N½NW¼NE¼, S½SE¼NE¼, N½NE¼NW¼, and NE¼SE¼;
- Sec. 31, lots 1, 2, 3, and 4, and E½SW¼.

A strip of land 660 feet in width being 330 feet on each side of and running parallel and concentric with the centerline of Canton Creek through the following described subdivisions:

T. 25½ S., R. 1 E.,
- Sec. 32, lots 3 and 4.

A strip of land 660 feet in width being 330 feet on each side of and running parallel and concentric with the centerlines of Horse Heaven Creek, Windy Creek, and Tributary B through the following described subdivisions:

T. 23 S., R. 2 E.,
- Sec. 29, E½;
- Sec. 32, NE¼, SE¼NW¼, E½SW¼, and W½SE¼.

A strip of land 660 feet in width being 300 feet on each side of and running parallel and concentric with the centerlines of Cedar Creek, Buster Creek, Longs Creek, City Creek, and Horse Heaven Creek through the following described subdivisions:

T. 24 S., R. 2 E.,
- Sec. 4, W½SW¼ and SE¼SW¼;
- Sec. 5, lots 1 and 2, S½NE¼, E½SW¼, and SE¼;
- Sec. 7, lots 3 and 4, and SE¼;
- Sec. 8, NW¼NE¼, E½NW¼, NE¼SW¼, and W½SW¼;
- Sec. 9, N½NW¼;
- Sec. 19, E½NE¼;
- Sec. 20, W½SW¼NW¼, NW¼SW¼, E½SW¼SE¼, and SE¼SE¼;
- Sec. 21, S½SW¼ and W½SE¼;
- Sec. 31, lots 1 and 2, S½NE¼, and NE¼SE¼;
- Sec. 32, S½NW¼, N½SW¼, and NW¼SE¼.

A strip of land 660 feet in width being 330 feet on each side of and running parallel and concentric with the centerlines of Singe Creek, Reynolds Creek, Johnson Creek, and Big Bend Creek through the following described subdivisions:

T. 25 S., R. 2 E.,
- Sec. 3, lots 1, 2, 5, 6, 7, and 8, S½NW¼, and NW¼SW¼;
- Sec. 4, S½NE¼, SW¼, N½SE¼, and SW¼ SE¼;
- Sec. 5, S½SE¼;
- Sec. 7, W½NE¼ and SE¼NE¼;
- Sec. 8, N½NE¼, E½NE¼NW¼, and S½SW¼;
- Sec. 16, S½NW¼, and N½SW¼;
- Sec. 17, NE¼; and N½NW¼;
- Sec. 30, lots 2 and 3, and NW¼SE¼.

Steamboat Creek Roadside and Streamside Zones, Additions

A strip of land of variable width located between a line 200 feet on the northerly and westerly side and running parallel and concentric with the centerline of Steamboat Creek Road No. 232, and a line 330 feet on the southerly and easterly side and running parallel and concentric with the centerline of Steamboat Creek and through the following described subdivisions:

T. 25 S., R. 1 E.,
- Sec. 24, NW¼SE¼;
- Sec. 25, NW¼NE¼ and SE¼NW¼;
- Sec. 26, S½SE¼NE¼ and S½S½NW¼;
- Sec. 27, S½SW¼SW¼ and S½SE¼;
- Sec. 28, SW¼SE¼SW¼ and NE¼SE¼;
- Sec. 32, SW¼SW¼;
- Sec. 33, SW¼NE¼ and S½N½SW¼.

T. 25½ S., R. 1 E.,
- Sec. 32, those portions of lots 2 and 3, and S½SW¼, located outside the boundary of the North Umpqua Road Zone withdrawal.

A strip of land of variable width located between a line 200 feet on the northerly and westerly or southerly and westerly side and running parallel and concentric with the centerline of Steamboat Creek Road No. 232, and a line 330 feet on the northerly and easterly or southerly and easterly side and running parallel and concentric with the centerlines of Steamboat Creek and East Fork Steamboat Creek through the following described subdivisions:

T. 24 S., R. 2 E.,
- Sec. 2, SW¼SW¼;
- Sec. 3, N½SW¼ and S½S½;
- Sec. 4, S½SE¼;
- Sec. 8, SE¼SE¼;
- Sec. 9, N½NE¼, NW¼, and NW¼SW¼;
- Sec. 10, NW¼NW¼;
- Sec. 17, NW¼NE¼ and E½SE¼SW¼;
- Sec. 20, E½E½NW¼, NW¼SE¼, and E½SW¼SE¼;
- Sec. 29, E½W½E½;
- Sec. 32, NE¼NE¼ and NE¼NW¼;
- Sec. 33, NW¼SW¼ and S½SW¼.

A strip of land of variable width located between a line 200 feet on the northerly and westerly or southerly and easterly side and running parallel and concentric with the centerline of Steamboat Creek Road No. 232, and a line 330 feet on the southerly and easterly or northerly and westerly side and running parallel and concentric with the centerline of Steamboat Creek through the following described subdivisions:

T. 25 S., R. 2 E.,
- Sec. 4, lots 3, 4, and 5;
- Sec. 5, lot 1, N½SW¼NE¼, SE¼NW¼, SW¼SW¼, NE¼SE¼, and W½ of lot 8;
- Sec. 7, SE¼NE¼;
- Sec. 19, lot 3, NE¼ NE¼, SW¼ NE¼, and S½ of lot 2.

The areas described aggregate approximately 2,400 acres in Douglas and Lane Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 5, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–19279 Filed 8–13–91; 8:45 am]

BILLING CODE 4310–33–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–497; RM–7420]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 262C2 to Garapan, Saipan, at the request of Commonwealth Radio Corporation. See 55 FR 46232, November 2, 1990. Channel 262C2 can be allotted to Garapan, Saipan, in compliance with the Commission's minimum distance separation requirements. The coordinates are North Latitude 15–11–10 and East Longitude 145–44–26. With this action, this proceeding is terminated.

DATES: *Effective Date:* September 23, 1991. The window period for filing applications will open on September 24, 1991, and close on October 24, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–497, adopted July 29, 1991, and released August 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Central Marianas, is amended by adding Channel 262C2 at Garapan.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–19367 Filed 8–13–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Threatened Status under "Similarity of Appearance" Provisions for Felis concolor in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Florida panther (*Felis concolor coryi*) is listed as an endangered species under the Endangered Species Act (Act) of 1973, as amended. The Service now determines all other free-living *Felis concolor* (common names: mountain lion, cougar, puma, panther, etc.) to be threatened under the "Similarity of Appearance" provisions of the Act wherever they may occur in Florida. This action is necessary to protect the listed endangered Florida panther from illegal take. For the untrained eye, it is very difficult to distinguish individuals of Florida panthers from individuals of unlisted subspecies of *Felis concolor*. Unlisted species of cougars periodically occur in Florida either as escapees from captivity or are deliberate releases.

EFFECTIVE DATES: September 13, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32218.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Under the "Similarity of Appearance" provisions of section 4(e) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and associated regulations (50 CFR 17.50 and 17.51), species (or subspecies or other groups of wildlife) which are not considered to be endangered or threatened, may nevertheless be treated as such for the purpose of providing protection to a species (or subspecies or other groups of wildlife) that is biologically endangered or threatened. Under these "Similarity of Appearance" provisions the Service must find: (a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in identifying listed from unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate enforcement and further the purposes of the Act. This rule is consistent with all three of those provisions.

The Florida Game and Fresh Water Fish Commission (Commission) estimates that at least several hundred mountain lions are currently held in captivity in Florida. These animals are often of unknown origin, but most are probably from the western U.S. Occasionally, captive mountain lions accidentally escape or are deliberately released. According to the Commission's Division of Law Enforcement, 20 known escapes of mountain lions have occurred in the last few years, and 48 mountain lions were seized in 1989, mostly due to illegal possession. There is a risk that Florida panthers will be killed under the assumption or justification that they are escaped mountain lions. There also is a need to protect mountain lions which are released experimentally in the course of recovery work for the Florida panther. In 1989, five Texas mountain lions were released in Osceola National Forest as surrogates to test the suitability of the habitat for Florida panthers. During the study, one cougar was known to have been, and another suspected to have been, shot and killed illegally. A mountain lion from a private zoo near Bonita Springs was illegally shot and killed within two days of its escape in March 1990.

Because it is almost impossible for the lay public to distinguish between the listed and unlisted subspecies of *Felis concolor*, it has been difficult or impossible to prosecute cases of illegal take. Therefore, in order to further the purposes of the Act in providing protection for the endangered Florida panther, the Service makes the following findings: (1) That enforcement personnel, as well as nearly all other persons, would be unable to routinely separate the listed Florida panther from unlisted subspecies of *Felis concolor*, (2) that the Florida panther is so endangered in the wild that the loss of a single animal through illegal take could seriously jeopardize the survival of the subspecies; and (3) that the take of any *Felis concolor*, in areas where the listed Florida panthers occur would be without regard for, or forehand knowledge of, the status of that particular individual of *Felis concolor*, and thus would pose direct and indirect threats to the endangered Florida panther.

On August 27, 1990 (55 CFR 34943) the Service published a proposal to determine, for law enforcement purposes, any free-living *Felis concolor*, not otherwise identifiable as a Florida panther (*Felis concolor coryi*) to be threatened under section 4(e), "Similarity of Appearance" provisions of the Act, wherever it may be found in the wild in Florida. Free-living *Felis concolor*, in Florida would be allowed to be taken under permit (50 CFR 17.52) or by an employee of the Service or State or a Service or State-designated agent when it has been established by the Service, in consultation with the State, that the animal in question is not a Florida panther (*Felis concolor coryi*). Not withstanding this prohibition, it would remain legal for any party to take *Felis concolor*, in Florida in defense of his own life or the lives of others (see 50

CFR 17.21(c)(2)). It would also remain legal for employees or agents of the Service or the Florida Game and Fresh Water Fish Commission to remove or take *Felis concolor* that constituted a demonstrable but nonimmediate threat to human safety (see 50 CFR 17.21(c)(3)(iv)). Since in some cases it may be impossible to determine the subspecific identity of *Felis concolor*, without first capturing the animal for examination, a special rule (see § 17.40(h)(3) of the special rules below) has been added to these final regulations to allow a Service or State employee or designated agent to take *Felis concolor* in Florida by non-lethal means for identification purposes. Such knowledge is essential to the conservation and recovery of the endangered Florida panther. A clarification has also been added to § 17.40(h)(3) of the special rules (see Summary of Comments and Recommendations, and Special rules sections below) to clarify the disposition of *Felis concolor*, taken by a Service or State employee or designated agent, and known not to be a Florida panther or eastern cougar.

Section 7 of the Act, Interagency Cooperation, will continue to apply to the endangered Florida panther, but does not apply to animals protected by similarity of appearance.

Summary of Comments and Recommendations

In the August 27, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Subsequently, the period for public comment was reopened on October 10, 1990, and extended to November 16, 1990 (55 FR 41244), to allow for the publication of required newspaper notices. Notices inviting public comment were published in the following Florida newspapers: On September 30, 1990, in the Tampa Tribune, the Orlando Sentinel, the Miami Herald, the Jacksonville Times-Union, and the Pensacola News Journal; and on October 1, 1990, in the Tallahassee Democrat.

Twelve comment letters were received. The Florida Game and Fresh Water Fish Commission and seven conservation organizations unconditionally supported the proposal. Four letters representing comments from two private individuals and three conservation organizations expressed qualified support and raised the following concerns:

Comment: The proposed rule allows for taking of *Felis concolor*, in Florida once it is determined that the animal does not represent *F.c. coryi*. This could lead to removal of the Everglades National Park (ENP) panthers, which are important to the survival of the Florida panther. Proper rulemaking procedures should be followed before "hybrid" animals lose their current protected status.

Service Response: Felis concolor known not to be *coryi* can currently be taken by Service or State-designated agents. This rule does not change that situation. The ENP panthers contain mitochondrial DNA derived from South or Central American *Felis concolor*, indicating past interbreeding with females from that area (O'brien *et al.* 1990). The Service considers the ENP panthers to be protected under the Endangered Species Act and has no plans to remove them from the wild. Introgression of genes from ENP cats is likely to benefit the highly inbred Big Cypress population (O'Brien *et al.* 1990).

Comment: Take of free-living *Felis concolor*, in Florida should only be allowed for reasons of human safety. Such animals have the potential to strengthen the genetic structure of wild Florida panthers through interbreeding with them.

Service Response: The Service agrees that the Florida panther would benefit from the restoration of some of the genetic variability apparently lost due to small population size and consequent inbreeding. However, any attempt to reintroduce genetic variability into the Florida panther population should be done within a controlled way with known genetic stock, not by random escapes of captive animals of unknown origin.

Comment: The proposed rule should be extended to all areas within the historic range of the Florida panther. Anecdotal evidence indicates panther sightings outside Florida.

Service Response: The Service is unaware of recent confirmed Florida panther sightings outside Florida. If such evidence becomes available, and if subsequent conservation and recovery needs indicate that threatened by similarity of appearance regulations in other states would benefit the Florida panther, the Service will consider proposing additional rules.

Comment: It is not possible to accurately determine in the field whether or not the animal in question is a Florida panther, since genetic testing is required.

Service Response: In the case of escaped *Felis concolor*, the known origin of the animal will often indicate that it is not a Florida panther. If the identity of the animal is uncertain, a special rule has been added (see § 17.40(h)(3) of the special rules below) to allow non-lethal take of *Felis concolor* in Florida by Service or State employees or designated agents for the purpose of determining the identity of the animal. This is necessary for the conservation and recovery of the Florida panther in order to have control over potential interbreeding between Florida panthers and *Felis concolor* of other origins.

Comment: Take of *Felis concolor* determined not to be the Florida panther is an issue that must be addressed through rulemaking procedures. Questions involving animal rights must be properly addressed.

Service Response: The rules here promulgated by the Service have addressed the rulemaking requirements of the Endangered Species Act, the Administrative Procedure Act, and all other applicable legislation. The rules are authorized under the provisions of the Endangered Species Act and are not in violation of existing animal welfare legislation. Humane practices are followed by both the Service and the Florida Game and Fresh Water Fish Commission in handling all wildlife.

Comment: The Service should conduct thorough investigations of all cases in which *Felis concolor* are taken in defense of human life. This could be used as a justification for trophy hunting.

Service Response: The Service would investigate any such cases carefully. Taking for this reason must be reported to the Service within 5 days, and the specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service (see § 17.40(h) (4) and (5) of the special rules below). The use of free-living Florida *Felis concolor* taken in defense of human life for trophies will not be allowed by the Service.

Comment: All species (sic) of *Felis concolor* occurring in the historic range of the Florida panther should be listed as endangered by similarity of appearance. Taking of all species (sic) of *Felis concolor* should be permitted under an endangered species permit issued pursuant to 50 CFR 17.52.

Service Response: The Service believes that "threatened" status for *Felis concolor* provides adequate protection against inadvertent take of *Felis concolor coryi*. A higher designation would not substantially

facilitate enforcement of the Endangered Species Act. Moreover, this suggested approach would not provide the flexibility needed to take *Felis concolor* determined to not be the Florida panther, particularly escapees known to represent other subspecies. Obtaining permits under § 17.52 requires written application to the Service; because of this delay, capture of escaped animals would be impractical or impossible.

Comment: The proposed special rules do not define take. Would take of *Felis concolor* known to not be Florida panthers or eastern cougars be non-lethal? If non-lethal, what would be the disposition of taken individuals?

Service Response: Take, as defined in section 3(18) of the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Take of *Felis concolor* known not to be the Florida panther or eastern cougar could be lethal or non-lethal, but except for cases of risk to human life, or other similar peril, such animals are usually anesthetized by darting rather than being killed. Disposition of animals taken by permit under § 17.52 or in defense of human life is at the discretion of the Service's Director. A clarification has been made (see § 17.40(h)(3) under the special rules below) to indicate that *Felis concolor* taken by Service or State employees or designated agents in Florida, and known not to be Florida panthers or eastern cougars, shall be disposed of at the discretion of the Florida Game and Fresh Water Fish Commission with the concurrence of the Service.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

O'Brien S.J., M.E. Roelke, N. Yuhki, K.W. Richards, W.E. Johnson, W.L. Franklin, A.E. Anderson, O.L. Bass, Jr., R.C. Belden, and J.S. Martenson. 1990. Genetic introgression within the Florida panther *Felis concolor coryi*. National Geographic Res. 6(4):485–494.

Author

The primary author of this rule is Dr. Michael M. Bentzien, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation of part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
•	•	•	•	•	•		
Lion, mountain	*Felis concolor* (all subspecies except *coryi*).	Canada to South America	U.S.A. (FL)	T(S/A)	432	NA	17.40(h)
•	•	•	•	•	•		

3. Section 17.40 is amended by adding paragraph (h) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(h) Mountain lion (*Felis concolor*). (1) Except as allowed in paragraphs (h)(2), (h)(3), and (h)(4) of this section, no person shall take any free-living mountain lion (*Felis concolor*) in Florida.

(2) A mountain lion (*Felis concolor*) may be taken in this area under a valid threatened species permit issued pursuant to 50 CFR 17.52.

(3) A mountain lion (*Felis concolor*) may be taken in Florida by an employee or designated agent of the Service or the Florida Game and Fresh Water Fish Commission for taxonomic identification or other reasons consistent with the conservation of the endangered Florida panther (*Felis concolor coryi*). When it has been established by the Service, in consultation with the State, that an animal in question is not a Florida panther (*Felis concolor coryi*) or an eastern cougar (*Felis concolor couguar*), such animals may be removed from the wild. The disposition of animals so taken shall be at the discretion of the Florida Game and Fresh Water Fish Commission, with the concurrence of the Fish and Wildlife Service.

(4) Take for reasons of human safety is allowed as specified under 50 CFR 17.21(c)(2) and 17.21(c)(3)(iv).

(5) Any take pursuant to paragraph (h)(4) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, Virginia 22203, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

Dated: July 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–19227 Filed 8–13–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of opening and closure.

SUMMARY: NOAA announces that the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Horse Mountain, California, to the U.S.-Mexico border opened for two days on August 1–2, 1991. The Director, Northwest Region, NMFS (Regional Director), determined that the separate catch quota of 5,000 coho salmon reserved preseason for the commercial fishery in this subarea would be caught within 2 days and, therefore, the fishery for all salmon species should be open from August 1 to August 2, 1991. These actions are necessary to conform to the preseason notice of 1991 management measures and are intended to ensure conservation of coho salmon.

DATES: *Effective:* Opening of the EEZ from Horse Mountain, California, to the U.S.-Mexico border to commercial fishing for all salmon species was effective at 0001 hours local time, August 1, 1991. Closure of the EEZ in this subarea to commercial fishing for all salmon species was effective at 2400 hours local time, August 2, 1991. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

Comments: Public comments are invited until August 29, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that a separate catch quota of 5,000 coho salmon reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border would be available upon attainment of the overall catch quota for coho salmon south of Cape Falcon, Oregon, or of the subarea catch ceiling for coho salmon south of Cascade Head, Oregon, minus the 5,000 deduction.

When the overall catch quota and subarea catch ceiling for coho salmon were reached, NOAA announced that the 5,000 coho salmon reserve would be made available at a later date so that the commercial fishery in the subarea from Horse Mountain to Point Arena, California, which does not open until August 1, 1991, could have a portion of its season open for all salmon species. Therefore, commercial fisheries in the area from Cape Falcon, Oregon, to the U.S.-Mexico border, were closed for all salmon species and then reopened for all salmon species except coho salmon as regularly scheduled.

On July 22, 1991, the Regional Director determined that the coho salmon reserve should be made available on August 1, 1991, when the entire subarea from Horse Mountain, California, to the U.S.-Mexico border would open to commercial salmon fishing. Therefore, the commercial fishery in this subarea was opened for all salmon species effective 0001 hours local time, August 1, 1991.

Based on the best available information on July 29, 1991, the commercial fishery in the subarea from Horse Mountain, California, to the U.S.-Mexico border was projected to catch the 5,000 coho salmon reserve within 2 days of the August 1 opening. Therefore, the commercial fishery in this subarea was closed for all salmon species effective 2400 hours local time, August 2, 1991. In accordance with the preseason notice of 1991 management measures, the regularly scheduled fishery in this subarea reopened for all salmon species except coho salmon effective 0001 hours local time, August 3, 1991.

Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these actions was given prior to the times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the California Department of Fish and Game, and the Oregon Department of Fish and Wildlife regarding these actions affecting the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border. The State of California will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, NOAA has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted, through August 29, 1991.

Other Matters

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and record keeping requirements.

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

Dated: August 8, 1991.

Joe P. Clem,

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

[FR Doc. 91–19323 Filed 8–9–91; 12:12 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 157
Wednesday, August 14, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 997

[Docket No. FV-91-297PR]

Proposed Changes in Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 7 CFR part 997 which contains provisions regulating the quality of domestically produced peanuts not subject to the Peanut Marketing Agreement (7 CFR part 998). This proposal would change the regulations to recognize the blanching can only be used successfully in reconditioning peanuts failing to meet certain grade requirements, and to limit inspection of blanched peanuts to the same grade factors inspected under the Peanut Marketing Agreement (Agreement). This proposal would also make necessary revisions to clarify the regulations pertaining to ownership of peanuts which are moved for custom remilling or blanching, change the regulations to allow for more efficient utilization of peanut meal, make minor revisions in the disposition requirements for peanuts which fail to meet the requirements for human consumption and correct minor typographical errors in the regulations. These proposed changes are intended to bring the inspection, quality and disposition requirements under part 997 into conformity with those under the Agreement as required by the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by August 29, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone: 202–275–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and as further amended December 12, 1989, Public Law 101–220, section 4(1), (2), 103 Stat. 1878, hereinafter referred to as the "Act".

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility ACt (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 80 handlers of peanuts who have not signed the Agreement and thus, would be subject to the proposed regulations contained herein. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $3,500,000. It is estimated that most of the handlers would be small entities. Most producers doing business with these handlers would also be small entities. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1990 totalled 3.60 billion pounds, a 10 percent decrease from 1989 and 1988. The 1990 crop value is $1.26 billion, up 13 percent from 1989.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination to peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 95 percent of 1988 crop peanuts were marketed by handlers signatory to the Agreement.

Requirements established pursuant to the Agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee) established under the Agreement. The Committee works with the Department administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department.

Public Law 101–220, enacted December 12, 1989, amended § 608(b) of the Act to require all peanuts handled by persons who have not entered into the Agreement (non-signers) to be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement quality requirements of the Agreement. Regulations to implement Public Law 101–220 were issued and made effective on December 4, 1990. Violation of the requirements promulgated pursuant to Public Law 101–23 may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts, as determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445C–2), for the marketing year for the crop with respect to which such violation occurs. The intent of Public Law 101–220 and the objective of the Agreement is to insure that only wholesome peanuts of good quality enter edible market channels.

Currently, paragraph (a)(2) of § 997.40 *Reconditioning and disposition of peanuts failing quality requirements* provides that handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation I peanuts as defined in § 997.5(b)) that fail to meet the requirements for human consumption specified in § 997.30(a). This includes peanuts failing to meet those requirements because of excess damage, minor defects, moisture, foreign material, fall through (sound split and broken kernels and whole kernels passing through specified sized screens), or are positive as to aflatoxin. However, blanching is not a suitable process for reconditioning peanuts failing to meet those requirements because of excess fall through. During the blanching process the red skins are removed from the peanuts and the moisture of the peanuts is reduced. The loss of skins and moisture tends to reduce the size of the peanuts. Hence peanuts failing to meet the fall through requirements initially would continue to fail to meet those requirements after blanching, and peanuts initially meeting the fall through requirements would likely fail to meet those requirements after blanching because of the change in size. In recognition of this and to bring the requirements into conformity with those in effect under the Agreement, the proposed rule would modify paragraph (a)(2) of § 997.40 to specify that only peanuts that fail to meet the requirements specified in § 997.30(a) because of excess damage, minor defects, moisture, or foreign material, or are positive as to alfatoxin may be blanched to attempt to cause the peanuts to meet the minimum requirements specified in paragraph (a). In addition, paragraph (a)(2) of § 997.40 would be modified to specify that, after blanching, such peanuts must meet only the specification for unshelled peanuts, damaged kernels, minor defects, moisture and foreign material as listed in paragraph (a)(1) of § 997.30 and be accompanied by a negative aflatoxin certificate to be eligible for disposition into human consumption outlets.

Paragraph (b)(3) of § 997.40 requires meal produced from the crushing of "restricted" categories of peanuts to be disposed of for use as fertilizer or other non-feed uses. On January 23–24, 1991, the Committee unanimously recommended changes in the regulations under the Agreement which would require that meal produced from the crushing of all "restricted" categories of peanuts be sampled and tested for aflatoxin, and that the numeric test results be shown on the certificate accompanying each shipment of meal produced from the rushing of "restricted" categories of peanuts. The Committee also recommended that restrictions be removed from the regulations applicable to the use and disposition of meal produced from the crushing of "restricted" peanuts. Meal produced from the crushing of "unrestricted" categories of peanuts would continue to be exempt from aflatoxin testing requirements and would be eligible for feed use without testing. Accordingly, this proposed rule would implement similar changes in § 997.40 of the regulations applicable to handlers who are not signatory to the Agreement. In addition to requiring meal produced from the crushing of restricted categories of peanuts to be tested, the change would require such meal to be prepared for disposition in specifically identified lost not exceeding 200,000 pounds to protect the reliability of the sampling and testing procedures.

Generally, restricted categories of peanuts are peanuts which were determined to be Segregation III or peanuts which contain or are likely to contain significant levels of aflatoxin. Unrestricted categories of peanuts are peanuts which have been determined to be Segregation I or II pursuant to § 997.20 or have been determined to be negative (based on the criteria applicable to non-edible quality categories) as to aflatoxin content.

Currently, other Federal and State requirements or criteria for the disposition of peanut meal in certain feed outlets are less restrictive than those currently in effect under part 997. Therefore, the regulations restrict dispositions of peanut meal for feed use that would be authorized under other Federal or State requirements or criteria. The recommended changes would provide crushers and meal receivers with certified information as to the aflatoxin content of meal produced from restricted categories of peanuts. Receivers would then make usage determinations based upon Federal or State requirements or criteria in effect for the desired outlet. This would allow for more efficient utilization of peanut meal, eliminate differences between the regulations under part 997 and other State or Federal requirements or criteria, and simplify the requirements in effect for the disposition of peanut meal.

Section 997.40 includes provisions which regulate the disposition of peanuts which fail to meet the requirements for human consumption. Paragraphs (b)(1)(iv) states that certain peanuts may be disposed of to wildlife feed or rodent bait use. This proposed rule would delete paragraph (b)(1)(iv), and paragraph (b) would be revised to specify that only fall through (a specific category of non-edible quality peanuts) which has been tested and determined negative as to aflatoxin may be used for such purposes. This proposed change i necessary to make the disposition requirements consistent with those in place under the Agreement. The Department is also revising and redesignating paragraph (b)(4)(ii) as paragraph (b)(4)(iii), adding a new paragraph (b)(4)(ii), and revising paragraph (b)(5).

This proposed rule would revise the second sentence of § 997.40(a)(3), which requires the title to peanuts moved for remilling or blanching to be retained by the original handler until such peanuts have been remilled or blanched and certified as meeting the requirements for human consumption, to specify that that sentence applies only to peanuts moved for custom remilling or blanching under paragraphs (a)(1) and (a)(2) and not to peanuts which are sold to another handler for further handling. Currently, the regulations require handlers to retain title to peanuts which they are allowed to sell to other handlers for further handling. This proposed change would correct the ambiguity in paragraph (a).

Finally, this proposal would correct minor typographic errors in the last sentence § 997.30(c)(2), the first sentence of § 997.40 (a)(1), and the first sentence of § 997.52.

Based on the above, the Administrator of the AMS has determined that the proposed changes would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the sections of the regulations that would be amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

A comment period of 15 days is deemed appropriate because the 1991 crop year began on July 1, and any changes that may be adopted in the regulations as a result of this proposal should be implemented as soon as possible.

All available information and written comments timely received in response to the request for comments will be considered in deciding whether or not to implement this proposal.

List of Subjects in 7 CFR Part 997

Peanuts, Quality regulations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is proposed to be amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674; Sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

2. Section 997.30 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

(c) * * *

(2) * * * A copy of such notice covering each lot shall be sent to the Division.

* * * * *

3. Section 997.40 is amended by revising the first sentence of paragraph (a)(1), revising paragraph (a)(2), revising the second sentence of paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) * * *

(1) Handlers may remill peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a) or move positive lot identified shelled peanuts that fail to meet such requirements to a custom remiller or sell such peanuts to another handler, or a handler as defined in 7 CFR 998.8, for remilling or further handling. * * *

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a) because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet the specifications for unshelled peanuts, damaged kernels, minor defects, moisture and foreign material as listed in § 997.30(a) and be accompanied by a negative aflatoxin certificate. If such peanuts do not meet the requirements of § 997.30(a) they shall be disposed of and such disposition reported as provided in paragraph (b) of this section.

(3) * * * The title of peanuts moved for custom remilling or blanching shall be retained by the handler until the peanuts have been remilled or blanched and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in § 997.30(a).

* * * * *

(b) *Disposition of shelled peanuts failing quality requirements for human consumption.* (1) Handlers may dispose of positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) which fail to meet the requirements for human consumption specified in § 997.30(a) and positive identified lots of loose shelled kernels, fall through and pickouts which have been certified "negative" as to aflatoxin content as unrestricted:

(i) To domestic crushing or to other handlers, or a handler as defined in 7 CFR 998.8, for crushing or fragmenting and exportation (such disposition shall be reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor");

(ii) To export to countries other than Canada or Mexico, provided they meet fragmented requirements (such disposition shall be reported on Form FV–117–6 "Handler's Report of Export of Unrestricted Non-Edible Quality Fragmented Peanuts");

(iii) To domestic animal feed use as provided in paragraph (b)(2) hereinafter or to other handlers, or a handler as defined in 7 CFR 998.8, for such disposition.

Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wildlife feed or rodent bait use in containers labeled as such (such disposition shall be reported on Form FV–117–7 "Handlers Report of Disposition of Non-Edible Quality Peanuts for Wild-Life Feed or Rodent Bait").

(2) Shelled peanuts which fail to meet requirements for disposition to human consumption outlets may be disposed of for use as domestic animal feed: *Provided,* That each lot of peanuts so disposed of is:

(i) Treated with an appropriate coloring or dyeing solution with a minimum of 80 percent of the peanuts showing evidence of the dye or coloring agent;

(ii) Handled and shipped under positive lot identification procedures, (except for bulk loads, red tags shall be used and such tags marked, "For Animal Feed—Not for Human Consumption");

(iii) Covered by a valid "negative" aflatoxin certificate; and

(iv) That the handler's bill of lading and invoice covering the shipment of each such lot include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption." Handlers shall report such disposition on Form FV–117–8 "Handler's Disposition Report of Dyed Non-Edible Quality Peanuts to Animal Feed Use (Unrestricted Peanuts Only)".

(3) Positive lot identified shelled peanuts failing to meet the quality requirements for human consumption specified in § 997.30(a) due to testing positive for aflatoxin pursuant to § 997.30(c) may be disposed of for "restricted" domestic crushing and reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor". Such peanuts may also be exported, as "restricted", to countries other than Canada or Mexico. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts. The "in-land" bill of lading and invoice covering the export of "restricted" peanuts must include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin. Exportation of such restricted peanuts shall be reported on Form FV–117–9 "Handler's Report of Export of Restricted Non-Edible Quality Fragmented Peanuts".

(4)(i) Handlers who have acquired Segregation 2 and 3 farmer's stock peanuts pursuant to § 997.20(f) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanut may be disposed of to:

(A) Other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing, as "restricted"; or

(B) Crushers for crushing as "restricted". Handlers may shell such peanuts and further disposition of the shelled peanuts shall be as provided in paragraph (b)(3) of this section.

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin

content, and meal produced from the crushing of other "restricted" categories of peanuts shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled by an inspector of the Federal-State Inspection Service and tested for aflatoxin in a laboratory listed in § 997.30(c)(5)(i) of this part. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of other categories of peanuts determined by this section to be eligible for "unrestricted" crushing, shall be exempt from aflatoxin testing requirements.

(iii) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to § 997.20(f) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be disposed of to other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing or to crushers. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and dispose of the shelled peanuts;

(A) To another handler, or a handler as defined in 7 CFR 998.8, for fragmenting or crushing;

(B) To export as "unrestricted"; or

(C) To domestic crushing as "unrestricted". The meal produced from such peanuts may be disposed of without restriction. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts.

(5) Unless otherwise specified, the disposition and reporting requirements applicable to peanuts failing quality requirements for human consumption specified in the preceding paragraph (b) shall also apply to loose shelled kernels, fall through and pickouts.

* * * * *

4. Section 997.52 is amended by revising the first sentence to read as follows:

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers' stock peanuts on Form FV–117–10 "Handlers Monthly Report of Acquisitions" and file such other reports of acquisitions and shipments of peanuts, as prescribed in this part.

* * * * *

Dated: August 9, 1991.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19371 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1413

Food, Agriculture, Conservation, and Trade Act; Implementation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations at 7 CFR parts 1413 set forth the terms and conditions of the 1991 and subsequent production adjustment programs for wheat, feed grain, upland and extra long staple cotton and rice. In determining whether producers of these crops are eligible to participate in these programs a determination of whether a lease is a cash lease or share lease for purpose of participating in these programs. This proposed rule would amend 7 CFR 1413.111(b) to set forth provisions which address leases which are a combination of a cash and share lease.

DATES: Comments must be received on or before September 13, 1991.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Cotton, Grain, and Rice Price Support Division (CGRD). P.O. Box 2415, Washington, DC. Telephone: (202) 447–7641.

FOR FURTHER INFORMATION CONTACT: Charles M. Cox, Jr., Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, 202–382–8757.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "non major". It has been determined that this rule 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 regions; 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 titles and members of the Federal assistance programs to which this proposed rule applies are: Cotton Production Stabilization–10.052; Feed Grain Production Stabilization–10.055; Wheat Production Stabilization–10.058; Rice Production Program–10.065; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this propose rule since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of the 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 have no 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 information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0004 and 0560–0092. OMB approval for the information collections contained in these rules ran out on May 31, 1991; however, a request for a 3 year extension from OMB has been submitted.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing 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 Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork

Reduction Project (OMB No. 0560–0004 and 0560–0092) Washington, DC 20503.

Background

Historically landowners have rented their land to producers under two different types of lease agreements. Either for (1) a share of the crop or (2) a guaranteed cash amount or quantity of the crop. Under the share arrangement, the landowner also shares in the risk of crop production. Under the guaranteed arrangement the landowner does not share in the risk of producing the crop because the rental payment does not depend on the guaranty of the crop production. In some instances, the rental arrangement may be a combination of the guaranteed or share agreements. Traditionally, in administering CCC programs, CCC was not concerned with what type of lease arrangement the landowner and producer entered into. However, in the case of a share lease, the landowner is considered a producer and may be eligible for deficiency payments and price support with respect to the producer's share of the crop. In the case of a cash or guaranteed lease only the tenant may be eligible for the deficiency payments and price support.

With the advent of statutory payment limitation provisions, the type lease agreement became a significant factor because the person who received the deficiency payment was limited to a maximum amount of payments. To be certain that all producers understood how CCC would determine whether a lease agreement was a cash or share lease for payment limitation purposes specific definitions were provided. During the past several years, 3 different positions have been taken. During one period a lease was considered to be a share lease if the lease called for the landowner to receive any share of the crop. During another period, the county ASC committee was charged with determining whether the lease was a cash or share lease by reviewing the lease and determining whether the agreement was predominately cash or share. Currently CCC considers a lease to be a cash lease if the lease agreement provides for any guaranteed payment, either a cash amount or quantity of the crop. The current position enables a landowner and tenant to manipulate who will be charged with payments for payment limitation purposes. CCC is aware of instances where leases have been changed to provide that the landowner would receive a percentage of the crop plus a minimal cash rent amount. Under the current rules these leases would be considered a cash lease and the deficiency payments would be paid to the tenant.

CCC has found there is the potential for abuse of program provisions associated with any definition of a cash lease or share lease. For example, depending on the substance of the definition:

(1) When the lease is defined as a share lease producers trying to circumvent the payment limitation regulations can abuse the program by "creating" more producers on the farm. Each "created" share rent producer then receives a deficiency payment.

(2) When the lease is defined as a cash lease, producers trying to circumvent the payment limitations regulations can also abuse the program by not being considered a producer and "creating" multiple tenant producers who receive the deficiency payments and then pass them to the actual cash lease producer through rents and other schemes.

CCC proposes to amend the regulations set forth at 7 CFR 1413.111 to provide that for 1992 and subsequent years a lease will be considered a cash or share lease based on the following rules:

(1) If the landowner/landlord receives only a sum certain cash payment, or a specified quantity of the crop it will be a cash lease.

(2) If the landowner/landlord receives only a specific share of the crop, or proceeds from a specified share of the crop, it will be a share lease.

(3) A lease that provides for a combination payment of cash and a share of the crop production will be considered a:

(a) Cash lease if it is determined that the cash payment exceeds one half of:

(i) The landowner/landlord's total expected return (cash and share) for the crop year based on the provisions of the lease, or

(ii) The expected return from the share of the crop if the lease provides for the larger of a specified cash amount or a specified share of the crop.

(b) Share lease if it is determined that a cash payment is equal to or less than one-half of:

(i) Landowner/landlord's total expected return (cash and share) for the crop year based on the provisions of the lease, or

(ii) The expected return from the share of the crop if the lease provides for the larger of a specified cash amount or a specified share of the crop.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Wheat, Rice.

Proposed Rule

Accordingly, 7 CFR part 1413 is amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.111 paragraph (b)(2) is revised to read as follows:

§ 1413.111 Division of payments.

* * * * *

(b) * * *

(2) For the 1992 and subsequent crop years:

(i) A lease will be considered a cash lease if the lessor receives only a sum certain cash payment, or a specified quantity of the crop. A lease that provides for a combination payment of cash and a share of the crop production will be considered a cash lease if it is determined that the cash payment exceeds one half of:

(A) The lessor's total expected return (cash and share) for the crop year, based on the provisions of the lease; or

(B) The lessor's expected return from the share of the crop if the lease provides that the payment shall be the larger of a specified cash amount or a specified share of the crop.

(ii) A lease will be considered a share lease if the lessor only receives a specific share of the crop or proceeds from a specified share of the crop. A lease that provides for a combination payment of cash and a share of the crop production will be considered a share lease if it is determined that the cash payment is equal to or less than one-half of:

(A) The lessor's total expected return (cash and share) for the crop year based on the provisions of the lease, or

(B) The expected return from the share of the crop if the lease provides that the payment shall be the larger of a specified cash amount or specified share of the crop.

* * * * *

Signed at Washington, DC on August 7, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–19211 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–05–M

Food Safety and Inspection Service

9 CFR Parts 308, 318, and 381

[Docket No. 87-028P]

RIN No. 0583-AA88

Preventing Cross-Contamination of Meat Products Heat-Processed to 130°F. or Higher and Poultry Products Heat Processed to 155°F. or Higher By Other Products not Similarly Heat Processed

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) proposes to amend the Federal meat and poultry products inspection regulations to extend the current cross-contamination preventive requirements for cooked beef, roast beef, and cooked corned beef to all types of meat and poultry products that are heat processed to result in a minimum internal temperature of 130°F. for meat products and a minimum internal temperature of 155°F. for poultry products. The objective of this proposed amendment is to prevent the adulteration of heat processed meat and poultry products with pathogens such as *Salmonella, Listeria,* or other types of bacteria commonly found in or on meat and poultry products that have not received similar heat processing.

DATE: Comments must be received on or before: October 15, 1991.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. William Smith, at (202) 447-3840. (See also Comments under "**SUPPLEMENTARY INFORMATION.**")

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket Number 87-028P. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act should make such request to Mr. Smith so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291

The Administrator of the Food Safety and Inspection Service has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets. The proposed rule would extend the current cross-contamination preventive requirements for cooked beef, roast beef and cooked corned beef to all types of meat and poultry products receiving a heat process that results in a minimum internal temperature of 130°F. for meat products and a minimum internal temperature of 155°F. for poultry products. These requirements would help to prevent the adulteration, as a result of cross-contamination, of such heat processed meat and poultry products with pathogens such as *Salmonella, Listeria* or other types of bacteria commonly found in or on other meat and poultry products not similarly heat processed.

In 1987, the Agency completed a study [1] to describe the economic effects on industry of the 1982 cross-contamination preventive regulation pertaining to cooked beef, roast beef, and cooked corned beef, and to assess the impact of extending that regulation to the production of all meat and poultry products that receive similar heat processing. The results of the study indicated that approximately 95 percent of establishments not subject to the requirements of the 1982 cross-contamination preventive regulations were voluntarily meeting a substantial portion of current Agency regulatory standards for preventing product cross-contamination. This regulation is being proposed as a further compliance tool for inspectors. The Administrator has determined that this rule is not a "major rule."

The proposed regulation should reduce the compliance costs associated with cross-contamination incidents and subsequent investigations, possible recalls, or product detentions. Recalls and detentions of product place a heavy burden on Agency resources and have an adverse economic impact upon the affected industry. Last year FSIS monitored 28 recalls of meat and poultry products involving 1,470,058 pounds of product. About 32 percent of the recalls were due to problems of post-processing contamination based on analysis of data from the Agency's Microbiological and Surveillance Program and its investigations of contamination incidents.

In addition, the Agency believes this proposed regulation should: (1) facilitate uniform interpretation of the regulatory requirement, (2) allow plants flexibility to design ways to meet the requirement, and (3) eliminate costs to plants and the Agency associated with variations in interpretation that may occur when individual inspectors must rule on specific compliance cases.

Effect on Small Entities

This proposal would require that all meat and poultry products that receive heat processing that results in a minimum internal temperature of 130°F. for meat products and a minimum internal temperature of 155°F. for poultry products be handled in such a manner so as to assure that such products are not contaminated by direct or indirect contact with other meat and poultry products that have not been similarly heat processed.

The Administrator has made an initial determination that although there are a substantial number of small entities which produce such heat processed meat and poultry products, this proposed rule should not have a significant economic impact on these small entities as defined by the Regulatory Flexibility Act, 5 U.S.C. 601. Results of the 1987 Agency study indicated that meat and poultry establishments not subject to the requirements of the 1982 cross-contamination preventive regulation pertaining to cooked beef, roast beef, and cooked corned beef were already voluntarily meeting a substantial portion of current Agency recommendations for preventing product cross-contamination. The Agency has no reason to believe that circumstances have changed since 1987 that would make the above

[1] "*Impact Assessment,* Extension of the 1982 Cross-Contamination Preventive Regulation to All Cooked Ready-To-Eat Meat and Poultry Products." The Study is on file with the FSIS Hearing Clerk. Copies are available free of charge from that office.

determination invalid. The Agency believes that these requirements on industry will provide enough flexibility so that both small and large establishments will be equally able to comply at minimal cost. However, FSIS is interested in all comments, including data, regarding compliance costs.

Background

Microbiological Contamination

There are a number of microorganisms (found in or on food animals) which are destroyed when the meat or poultry is heat processed. However, if the heat processed meat or poultry is contaminated with pathogenic microorganisms through poor sanitation practices, these products may become unsafe for human consumption and can lead to serious illness or even death of the consumer. Especially susceptible are pregnant women, children, elderly people, and individuals with compromised immune systems, such as patients with Acquired Immunodeficiency Syndrome (AIDS). There are a number of pathogenic microorganisms, including those that produce toxins, to which product could be exposed.

Pathogens such as *Salmonella spp., Escherichia coli,* and *Campylobacter jejuni* are intestinal bacteria commonly found in warm-blooded food animals such as livestock and poultry. Many animals which are not clinically ill may nevertheless harbor these organisms. Consequently, the bacteria carried by such animals may be present in or on raw meat and poultry products derived from them.

Furthermore, these bacteria may be introduced onto uncontaminated carcasses or parts during boning, packing, defrosting and precook handling of raw meat or poultry, or by the flow of natural juices during subsequent heating of the product. These bacteria cannot be detected by sight, smell or taste. However, any such bacteria are destroyed if the product is properly heated, and the product is then safe to consume—unless it becomes recontaminated.

Staphylococcus aureus, a leading cause of food poisoning, may be transmitted to food by improper human handling. At warm temperatures certain types of *Staphylococcus* will multiply rapidly producing a heat-stable enterotoxin which leads to human illness.

Listeria monocytogenes is another type of bacteria which causes foodborne disease in susceptible individuals. This organism is commonly found in environments where livestock and poultry are raised. It is not destroyed or completely removed by slaughter procedures and is frequently found in or on meat and poultry that have not been adequately heated. *Listeria* has a high resistance to heat, nitrite, and pH and is capable of slow growth in refrigerated foods. All strains of *Listeria monocytogenes* are considered pathogenic.

Cooking Requirements for Cooked Beef and Roast Beef

On September 2, 1977, the Agency published a final rule (42 FR 44217) requiring that all "cooked beef roast" be heated to a minimum internal temperature of 145°F. (63°C.). This requirement was in response to 10 outbreaks involving approximately 110 cases of human solmonellosis, which occurred between 1975 and 1977. The outbreaks of human salonellosis were attributed to the consumption of commercially produced cooked beef roast which contained *Salmonella* bacteria that the then current procedures for this product failed to kill.

Based on data submitted by local, State and Federal agencies, FSIS determined that a minimum temperature of 145°F. (63°C.) in all parts of each beef roast was necessary to kill all *Salmonella* bacteria that might be present. However, although the 145°F. cooking temperature was effective in destroying the salmonellae, it was found to be inconsistent with many consumers' preference for rare roast beef. Thus, the Agency reviewed the results of various studies and after finding that a range of time and internal temperature combinations would produce safe product, added these as alternative requirements on July 18, 1978 (43 FR 30791).

Production Requirements for Cooked Beef, Roast Beef, and Cooked Corned Beef

Following the implementation of the 1977 processing requirement and its 1978 amendment, five outbreaks of salmonellosis occurred. Four of the five outbreaks occurred in establishments which were using the 145°F. temperature. The Agency concluded that the outbreaks of salmonellosis had been caused by inadequate sanitation practices resulting in contamination of heated product.

On July 23, 1982, FSIS published a rule (47 FR 31854), "Production Requirements for Cooked Beef, Roast Beef, and Cooked Corned Beef" which specified certain production and handling requirements for the prevention of cross-contamination of heat processed beef products from direct or indirect contact with raw meat products. The rule was published as an interim final because of the immediate risk to the public's health if more cases of salmonellosis were to occur. The rule was intended to prevent the adulteration of cooked beef, roast beef, and cooked corned beef caused by improper handling, processing, and storage practices. It incorporated the cooking requirements in the existing regulation, reorganized them for clarity and added a number of new provisions including:

1. A requirement that cooked product and raw product be either handled in separate areas with a wall between them that would prevent air exchange, or that if they are handled in the same area they must be handled at different times with a thorough cleaning of the area between uses;

2. A provision for the use of alternate procedures if affected establishments could show that product could be safely produced those procedures;

3. Some additional handling requirements for work surfaces, machines, tools, and employees' hands and clothing so that salmonellae are not carried by these means from raw meat to cooked meat; and

4. A storage requirement to assure that cross-contamination did not occur after processing, before the cooked product was securely wrapped in an impervious container.

On June 1, 1983, FSIS published a final rule (48 FR 24316), titled "Requirements for the Production of Cooked Beef, Roast Beef and Cooked Corned Beef" which contained some modifications including a new paragraph permitting alternate procedures for sanitary handling, processing, and storing of cooked beef, roast beef and cooked corned beef, if such procedures are submitted in writing and are approved by the Program before implementation (9 CFR 318.17(f)(7)).

In 1983, the Agency's Review and Evaluation Staff (R&E) conducted a nationwide review of 386 meat and poultry establishments to assess inspection operations activities related to water systems, blueprints, and equipment.[2] In the course of checking facilities for blueprint and equipment compliance, reviewers reported that 57 establishments were handling various exposed raw and heat processed meat and poultry product, other than roast beef type products, in the same room at

[2] Food Safety and Inspection Service, Review and Evaluation Staff, Special Projects Report, Water Systems, Blueprints, and Equipment, April 1983. The report is on file with the FSIS Hearing Clerk. Copies are available free of charge from that office.

the same time. The Agency believed this was significant because of the opportunities such conditions provide for salmonellae and other microorganisms in raw product to cross-contaminate heat processed meat and poultry products.

In 1987, the R&E staff studied the operating changes made by the cooked beef plants in response to the 1982 regulatory requirements (see footnote 1). That study found that 9 percent of the cooked beef plants were already in compliance with all of the requirements and therefore incurred no costs. Another 32 percent of those plants had minimal cost impacts due to requirements for improved management practices and increased sanitation supplies. About 35 percent of those plants had moderate cost impacts due to requirements to purchase new equipment such as wash basins and different type protective covers on the coolers. Only 15 percent of the plants incurred major costs. These costs were due to requirements for added cooler space, increased hours of operation and increased staffing.

A weighting procedure was used to measure the general cost impact by size of operation. It indicated that cooked beef plants producing less than 10,000 pounds annually, as a group, incurred slightly above a minor cost impact. Plant producing over a million pounds annually, as a group, incurred slightly below a moderate cost impact.

The Agency believes that the two chief causes of public health hazards in cooked ready-to-eat products are underprocessing and cross-contamination. The products covered by this rule are already subject to regulatory standards for minimum cooking. The Agency's analytical results from its Microbiological Monitoring and Surveillance Program and its investigations of contamination incidents show that about 32 percent of the contamination incidents related to cooked ready-to-eat products are the result of cross-contamination by raw product. As a result of this observation, R&E recommended to the Administrator that steps be taken to develop procedures to prevent cross-contamination.

The impact assessment of the cooked beef rule also evaluated the effects of extending it to all cook ready-to-eat meat and poultry products. It found that less than 4 percent of the plants, not already covered by the cooked beef rule, were reported as processing cooked and raw products in the same room at the same time. The study projected that the impacts on the non-beef plants would be similar to those experienced by the cooked beef rule, although the results of the 1987 study wee general in nature. The Agency concluded that the 1982 rule did not impose major costs on the cooked beef plants.

Since the Agency does not have all the data necessary for a comprehensive analysis of the need for and consequences of this proposed rule on cross-contamination, the Agency invites specific comments. In particular, the Agency is interested in the costs associated by different sizes of plants for complying with various aspects of this proposed rule. The Agency is also interested in comments regarding the costs of alternate requirements to those specifically identified in the rule that could show the product would be safely produced.

Recent Events

On April 14, 1989, a brand of turkey franks, a heat processed, ready-to-eat product was voluntarily recalled because of the presence of the bacterium *Listeria monocyctogenes* in the franks. Although most bacterial contaminants present on raw products are destroyed by thorough cooking, careless manufacturing practices or unsanitary conditions have led to a number of cases where such products have been contaminated with *Listeria* or other bacteria.

The Proposal

To minimize the possibility of cross-contamination of products that have been heated to a minimum internal temperature of 130° F. for meat products and a minimum internal temperature of 155° F. for poultry products with pathogens such as *Salmonella, Listeria* or other types of bacteria, the Agency has determined that all such heat processed meat and poultry products must be handled and stored in such a manner as to assure that such product does not become adulterated by direct or indirect contact with *Listeria, Salmonella* or other bacteria which may be present in or on other products that have not been similarly heat processed in the establishment.

The minimum internal product temperature of 130° F. is a logical choice for separating meat products that FSIS considers heat processed for pathogen destruction from other products. This temperature is the lowest temperature that can be used for the production of cooked beef, roast beef, and cooked corned beef. It is also the lowest temperature used for the preparation of any heat processed, ready-to-eat red meat product. Several other meat products are heat processed at lower temperatures, notably bacon and partially defatted fatty tissues, both of which are heated only to a maximum of 120° F. However, both of these products are considered raw products.

Poultry products will be subject to the requirements of this regulation when product is heat processed to a minimum internal temperature of 155° F. This is the minimum heat processing temperature currently required by the poultry products inspection regulations.

All meat products that are heat processed to a minimum internal temperature of 130° F. and all poultry products that are heat processed to a minimum internal temperature of 155° F. would have to comply with the provisions of this regulation.

To prevent direct contamination of such heat processed meat and poultry products, the Agency would require that they be handled in separate areas with a wall between them and other products not similarly heat processed; or, that if such heat processed products and other products not similarly heat processed are to be handled in the same area, that they be handled at different times with a complete and thorough cleaning and sanitization of the affected facilities and equipment between uses. The Agency would also make provisions for affected establishments to use alternate requirements provided that the establishment could show that product would be safely produced.

To prevent indirect contamination of such heat processed product, the proposal would establish handling requirements for work surfaces, machines, tools, and empioyees' hands and clothing, and packaging or storing requirements so that salmonellae and other microorganisms are not transferred by these means from other meat or poultry products.

Establishments would be required to:

1. Thoroughly clean and sanitize any work surface, machine, or tool which contacts product not heat processed with a germicidal solution equivalent to a minimum of 20 ppm chlorine [3] (a solution of over 200 ppm would require rinsing with water, 21 CFR 178.1010) before it contacts meat and poultry products subjected to heat processing as described above;

2. Require that employees wash their hands and sanitize them with a

[3] Chlorine usage at 20 ppm has been determined by FSIS to be effective in greatly reducing the bacteria on work surfaces, machines or tools which contact raw product. This determination is based on a 1985 Agricultural Research Service study "Chlorine Spray Washing to Reduce Bacterial Contamination on Poultry Processing Equipment," published in the *Poultry Science Journal* in 1986, V. 65, pp. 1120–1123. Copies of this article are available free of charge from the office of the FSIS Hearing Clerk.

germicidal solution equivalent to at least 20 ppm chlorine [4] whenever they enter the heat processing area or before preparing to handle heat processed product as described above, and as frequently as necessary during operations to avoid product contamination;

3. Require that outer garments, including aprons, smocks, and gloves, be especially identified as restricted for use only in areas where heat processing of ready-to-eat product takes place, changed at least daily, or more frequently if garment may have become contaminated or appears excessively soiled, and hung in a designated location when the employee leaves the area; and

4. Keep heat processed meat and poultry products from being in the same room as other products not similarly heat processed unless it is protected from cross-contamination by being packaged in a sealed, watertight container.

The Agency invites comments and supporting information and scientific data on alternative procedures or additions to the proposed procedures that would provide safe processing of meat and poultry products that are heat processed as described herein.

The Agency is also proposing an amendment to § 318.17 of the Federal meat inspection regulations. The Agency proposes to remove the information contained in paragraphs (j) and (k) and to revise paragraph (i) to contain a cross-reference to the proposed § 308.17. This would consolidate all of the information relating to requirements for the prevention of direct and indirect contamination into one section in the sanitation regulations.

List of Subjects

9 CFR Part 308

Meat inspection; Sanitation; Clothing.

9 CFR Part 318

Meat inspection; Sanitation; Clothing.

9 CFR Part 381

Poultry products inspection; Sanitation; Clothing.

Accordingly, 9 CFR, Parts 308, 318 and 381 of the Federal meat and poultry products inspection regulations would be amended as follows:

[4] Approved sanitizers can be found in the *List of Proprietary Substances and Nonfood Compounds*, Miscellaneous Publication 1419. Copies of this publication are available free of charge from the FSIS Hearing Clerk.

PART 308—SANITATION

1. The authority citation for part 308 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. A new section 308.17 would be added to part 308 to read as follows:

§ 308.17 Prevention of contamination of heat processed product.

(a) For purposes of this section the term "heat processed" means product has been heated to result in an internal temperature of 130°F. or higher. Such product shall be handled, in accordance with the regulations in this section, so as to assure that the product is not contaminated by direct or indirect contact with other product that has not been heat processed.

(b) Segregation of product. Establishments producing heat processed product described in paragraph (a) of this section shall:

(1) Physically separate areas where exposed heat processed product is handled from areas where other product not heat processed is handled, using a solid impervious wall that extends from floor to ceiling; or

(2) Handle exposed heat processed product and other product not heat processed at different times, with a complete and thorough cleaning and sanitizing of the entire area after other product not heat processed is handled and prior to the handling of heat processed product in that area; or

(3) If not completely in accord with paragraphs (b)(1) or (2) of this section, submit for approval, through the Inspector-in-Charge to the Regional Director, written procedures describing in detail how they will prevent contamination of heat processed product with microorganisms from other product not heat processed or from other product processing areas.

(4) Heat processed product as described in paragraph (a) of this section shall not be located in the same room as other product not heat processed unless it is protected from cross-contamination by being packaged in a sealed watertight container.

(c) Sanitation. Establishments producing heat processed product as described in paragraph (a) of this section shall:

(1) Thoroughly and completely clean and sanitize all work surfaces, machines, and tools which come in contact with product not heat processed using a germicidal solution equivalent to a minimum of 200 ppm chlorine (a solution of over 200 ppm requires rinsing with water) [1] before it comes in contact with heat processed product;

(2) Ensure that all employees wash their hands and sanitize them with a germicidal solution equivalent to a minimum of 20 ppm chlorine [1] before preparing to handle heat processed product, and as frequently as necessary during operations, to avoid product contamination; and

(3) Have outer garments, including aprons, smocks, and gloves, for use in areas where product is heat processed especially identified and restricted for such use only, and ensure such garments are changed at least daily, or more frequently if garment may have become contaminated or appears excessively soiled, and are hung in a designated location when employees leave the area.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

4. Paragraphs (j) and (k) of § 318.17 would be removed and paragraph (i) would be revised to read as follows:

§ 318.17 Requirements for the production of cooked beef, roast beef, and cooked corned beef.

* * * * *

(i) Cooked beef, roast beef, and cooked corned beef shall be handled as specified in § 308.17 of this subchapter to assure that the product is not contaminated by direct or indirect contact with other product that is not heat processed as described in section 308.17(a) of this subchapter.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for part 381 would continue to read as follows:

Authority: 21 U.S.C. 451 *et seq.*; 7 U.S.C. 450.

6. A new § 381.62 would be added to Subpart I to read as follows:

[1] Approved sanitizers can be found in the *List of Proprietary Substances and Nonfood Compounds*, Miscellaneous Publication 1419. Copies of this publication are available free of charge from the FSIS Hearing Clerk.

§ 381.62 Prevention of contamination of heat processed product.

(a) For purposes of this section, the term "heat processed" means product has been heated to result in an internal temperature of 155°F. or higher. Such product shall be handled so as to assure that the product is not contaminated by direct or indirect contact with other product that has not been heat processed.

(b) Segregation of product. Establishments producing heat processed product described in paragraph (a) of this section shall:

(1) Physically separate areas where exposed heat processed product is handled from areas where other product not heat processed is handled, using a solid impervious wall that extends from floor to ceiling; or

(2) Handle exposed heat processed product and other product not heat processed at different times, with a complete and thorough cleaning and sanitizing of the entire area after other product not heat processed is handled and prior to the handling of heat processed product in that area; or

(3) If not completely in accord with paragraphs (b)(1) or (2), of this section submit for approval, through the Inspector-in-Charge to the Regional Director, written procedures describing in detail how it will prevent contamination of heat processed product with microorganisms from other product not heat processed or from other product processing areas.

(4) Heat processed product as described in paragraph (a) of this section shall not be located in the same room as other product not heat processed unless it is protected from cross-contamination by being packaged in a sealed watertight container.

(c) Sanitation. Establishments producing heat processed product as described in paragraph (a) of this section shall:

(1) Thoroughly and completely clean and sanitize all work surfaces, machines, and tools which come in contact with product not heat processed using a germicidal solution equivalent to a minimum of 20 ppm chlorine (a solution of over 200 ppm requires rinsing with water) [1] before it comes in contact with heat processed product;

(2) Ensure that all employees shall wash their hands and sanitize them with a germicidal solution equivalent to a minimum of 20 ppm [1] chlorine before preparing to handle heat processed product, and as frequently as necessary during operations, to avoid product contamination; and

(3) Have outer garments, including aprons, smocks, and gloves, for use in areas where product is heat processed especially identified and restricted for such use only, and ensure such garments are changed at least daily, or more frequently if garment may have become contaminated or appears excessively soiled, and are hung in a designated location when employees leave the area.

The paperwork requirements proposed herein will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act (Pub. L. 96–511) and 5 CFR 1320.

Done at Washington, DC on: May 7, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91–19226 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–DM–M

[1] Approved sanitizers can be found in the *List of Proprietary Substances and Nonfood Compounds.* Miscellaneous Publication 1419. Copies of this publication are available free of charge from the FSIS Hearing Clerk.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–142–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require removal of the bulk cargo compartment flapper valve. This proposal is prompted by a report of a cargo compartment flapper valve that did not close during a functional check of the bulk cargo compartment fire extinguishing system. This condition, if not corrected, could result in loss of the extinguishing agent (halon) through an open flapper valve, which will decrease the fire extinguishing capability in the bulk cargo compartment.

DATES: Comments must be received no later than October 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–142–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Settle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206)–227–2673. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–142–AD." The postcard will be date/time stamped and returned to the commenter.

Discussion

One operator of Boeing Model 767 series airplanes has reported that the bulk cargo ventilation flapper valve did not close during a functional test of the fire extinguishing system. During normal operation, the flapper valve is always open; however, when a functional test of the cargo fire extinguishing system is performed or when the aft cargo fire switch is actuated, the valve is commanded to close. Further

investigation of the airplanes in production and on flight lines revealed that the valve occasionally would not close during functional tests and that the valve was usually re-rigged to make the flap work and close. If the flapper valve does not close when the fire extinguishing system is activated, halon will escape through the open valve. The halon loss will reduce the fire extinguishing capability in the cargo bay.

The flapper valve was originally installed in the Model 767 airplane to be in the open position and to exhaust the air from the bulk cargo compartment fan and heat tube. Recent testing and analysis of the system, however, has demonstrated that the flapper valve is not needed. Leakage between the liner panels and cargo door seals is adequate to exhaust the air. The natural leakage will accommodate the increase in flow from the bulk cargo compartment fan and the tube.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–21A0098, dated May 9, 1991, which describes the procedure to remove the flapper valve.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require removal of the bulk cargo ventilation flapper valve in accordance with the service bulletin previously described.

There are approximately 301 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 82 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost of the parts required to make this modification is $98 per airplane. Based on these estimates, the total cost impact of the AD on U.S. operators is estimated to be $98,236.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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: Docket No. 91–NM–142–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–21A0098, dated May 9, 1991, certificated in any category.

Compliance: Required within the next 4,000 flight hours after the effective date of this AD, unless previously accomplished.

To prevent halon from escaping out the bulk cargo ventilation flapper valve when the fire extinguishing system is activated, accomplish the following:

(a) Remove the bulk cargo ventilation flapper valve in accordance with Boeing Alert Service Bulletin 767–21A0098, dated May 9, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides and 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 forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, 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, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on August 1, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–19292 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–143–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require inspection of the hydraulic pressure tube to the power drive unit for the inboard leading edge slats and the adjacent pneumatic duct, and replacement if clearance is less than allowable limits or chafing is evident. This proposal is prompted by two reports of leaks in the hydraulic pressure tube caused by chafing between the hydraulic tube and pneumatic duct. This condition, if not corrected, could result in temporary impairment of the crew's vision caused by hydraulic fluid in the environmental control system.

DATES: Comments must be received no later than October 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Airworthiness Rules Docket No. 91–NM–143–AD, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. 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, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2673. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–143–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Two operators of Boeing Model 767 series airplanes reported leaks in the hydraulic pressure tube to the power drive unit for the inboard leading edge slats. The leaks were caused by chafing between the hydraulic pressure tube and a pneumatic duct. Further investigation of airplanes in production and some operator airplanes revealed that insufficient clearance may exist between the hydraulic pressure tube and the pneumatic duct. This condition apparently is caused by tolerance build-up. If a hole develops in the pneumatic duct and hydraulic pressure tube simultaneously as the result of chafing, hydraulic fluid can enter the environmental control system. The introduction of hydraulic fluid into the environmental control system could impair the crew's vision; passengers' vision would also be affected.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–29A0064, dated June 13, 1991, which describes procedures to inspect and replace the hydraulic pressure tube, and to repair the pneumatic duct, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the hydraulic pressure tube to the power drive unit for the inboard leading edge slats, and replacement, if the clearance is less than allowable limits or chafing is evident, in accordance with the service bulletin previously described.

There are approximately 342 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 129 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $28,380.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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: Docket No. 91–NM–143–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–29A0064, dated June 13, 1991, certificated in any category.

Compliance: Required within 3,000 flight hours after the effective date of this AD, unless previously accomplished.

To prevent hydraulic fluid from entering the cabin, accomplish the following:

(a) Inspect the inboard leading edge slat power drive unit hydraulic pressure tube for clearance from the adjacent pneumatic duct and for signs of chafing, in accordance with Boeing Alert Service Bulletin 767–29A0064, dated June 13, 1991.

(1) If the clearance is more that 0.25 inch and there are no signs of chafing, no further action is necessary.

(2) If the clearance is 0.25 inch or less or signs of chafing are found on the hydraulic tube, prior to further flight, replace the hydraulic tube in accordance with paragraph III.D. of the service bulletin.

(3) If chafing is found on the pneumatic duct, prior to further flight, repair the pneumatic duct in accordance with the service bulletin.

(b) An alternative method 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 forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, 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, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on August 1, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–19293 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91-NM-147-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to British Aerospace Model ATP series airplanes, which currently requires a one-time inspection of the normal operating linkage to ensure that certain bolts are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. If these systems do not operate properly, the airplane could experience a gear-up landing. This action would add a requirement for a modification of the undercarriage emergency release mechanism which, when installed, would terminate the need for the currently required operational tests. This proposal is prompted by the development of a modification which improves the existing design of the hydraulic landing gear change-over valve mechanism.

DATES: Comments must be received no later than October 7, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-147-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or argument as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-147-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 12, 1990, the FAA issued AD 90-21-11, Amendment 39-6806 (55 FR 47847, November 16, 1990), to require a one-time inspection of the normal operating linkage to ensure that 2BA bolts, Part No. A59-4C, are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. That action was prompted by reports of difficulty in lowering the landing gear using the normal and auxiliary systems. This condition, if not corrected, could result in a gear-up landing.

Since issuance of that AD, British Aerospace has developed a modification which improves the existing design by introducing two new swivel assemblies, a collar to minimize overtravel, and a cover to protect the emergency release mechanism. When installed, this modification will terminate the need for repetitive operational testing of the hydraulic landing gear change-over valve mechanism. British Aerospace has issued Service Bulletin ATP-32-29, Revision 1, dated June 6, 1991, which describes procedures to modify the undercarriage emergency release mechanism. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

The FAA has examined the findings of the CAA, reviewed all available information, and has determined that AD action is necessary for products of this type design, certificated for operation in the United States. Additionally, the FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Therefore, the FAA is proposing an AD which would supersede AD 90-21-11 with a new airworthiness directive that would continue to require a one-time inspection of the normal operating linkage to ensure that 2BA bolts, Part No. A59-4C, are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. This proposed AD would also require modification of undercarriage emergency release mechanism in accordance with the service bulletin previously described; when installed, this modification would be considered terminating action for the required operational tests.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 21 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $685 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,040.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

1. The authority citation of 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 removing Amendment 39–6806 and by adding the following new airworthiness directive:

British Aerospace: Docket No. 91–NM–147–AD.

Applicability: Model ATP series airplanes, as listed in British Aerospace Service Bulletin APT–32–29, dated March 27, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure proper operation of the landing gear and prevent a gear-up landing, accomplish the following:

(a) Within 24 hours after November 29, 1990 (the effective date of AD 90–21–11, Amendment 39–6806), perform an inspection of the normal operating linkage to determine if 2BA bolts, Part Number A59–4C, are installed. If any other part-numbered bolts are installed, prior to further flight, remove those bolts and replace them with Part Number A59–4C bolts, in accordance with British Aerospace Alert Service Bulletin A–ATP–32–26, Revision 1, dated September 25, 1990.

(b) Within 24 hours after November 29, 1990 (the effective date of AD 90–21–11, Amendment 39–6806), and thereafter at intervals not to exceed 30 hours time-in-service, perform an operational test of the hydraulic landing gear change-over valve mechanism, in accordance with British Aerospace Alert Service Bulletin A–ATP–32–26, Revision 1, dated September 25, 1990. Any binding or stiffness must be corrected prior to further flight, in accordance with instructions in the manufacturer's maintenance manual.

(c) Within 5 months after the effective date of this AD, modify the undercarriage emergency release mechanism and perform the associated functional test on the up lock release mechanism, in accordance with the accomplishment instructions in British Aerospace Service Bulletin ATP–32–29, Revision 1, dated June 6, 1991.

(d) Modification of the undercarriage emergency release mechanism, in accordance with British Aerospace Service Bulletin ATP–32–29, Revision 1, dated June 6, 1991, constitutes terminating action for the repetitive operational tests required by paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on August 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–19295 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–151–AD]

Airworthiness Directives; Garrett Auxiliary Power Division Models TSCP700–4B and TSCP700–5 Auxiliary Power Units (APU), as Installed on, but not Limited to, McDonnell Douglas Model DC–10 and KC–10 (Military) Series Airplanes, and Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Garrett auxiliary power units (APU), which would require replacement of the high pressure turbine (HPT) containment ring. This proposal is prompted by reports of HPT disc ruptures. This condition, if not corrected, could result in an uncontained HPT disc failure, with fragments of the disc exiting the APU casing and causing damage to the airframe or engine.

DATES: Comments must be received no later than October 7, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–151–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Garrett Airlines Services Division, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5245.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–151–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been two reported cases of HPT disc ruptures on Garrett Model TSCP700–4B and –5 auxiliary power units (APU). In both cases, the containment ring rolled and allowed disc fragments to escape the APU, causing damage to the airplane. This condition, if not corrected, can result in uncontained HPT disc failures.

The FAA has reviewed and approved Garrett Service Bulletin TSCP700–49–5892, Revision 2, dated October 10, 1990, which describes procedures for replacement of the HPT containment ring and containment support with new parts that will preclude the addressed problems.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require replacement of the HPT containment ring and containment support in accordance with the service bulletin previously described.

There are approximately 675 McDonnell Douglas Model DC–10 and KC–10 (military) series airplanes, and Airbus Model A300 series airplanes in the worldwide fleet that may be equipped with the affected APU. It is estimated that 304 airplanes of U.S. registry would be affected by this AD, that it would take approximately 130 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost for required parts is approximately $2,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,781,600.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Garrett Auxiliary Power Division: Docket No. 91–NM–151–AD.

Applicability: Model TSCP700–4B auxiliary power units (APU) prior to serial number 90697, as installed in, but not limited to, McDonnell Douglas Model DC–10 and KC–10 (military) series airplanes; and Model TSCP700–5 APU's prior to serial number 80443, as installed in, but not limited to, Airbus Industrie Model A300 series airplanes; certificated in any category.

Compliance: Required within 24 months after the effective date of this AD, unless previously accomplished.

To prevent uncontained high pressure turbine (HPT) disc failures, accomplish the following:

(a) Replace the HPT containment ring, part number (P/N) 976850–1, with P/N 3614975–1; and replace the HPT containment support, P/N 3604274–1, with P/N 3614934–1; in accordance with the accomplishment instructions of Garrett Service Bulletin TSCP700–49–5892, Revision 2, dated October 10, 1990.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles 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 Garrett Airlines Services Division, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on August 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–19294 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Definition of "Passenger" for Purposes of the Coastwise Laws 46 U.S.C. App. 289, 19 CFR 4.50(b)

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed changes of position; solicitation of comments.

SUMMARY: The U.S. Customs Service is reviewing its current definition of the term "passenger" for purposes of the coastwise passenger statute (46 U.S.C. App. 289). Customs is considering the revocation of its position that persons transported free of charge as an inducement for patronage or good will are not passengers. This change in position would not affect Customs position that *bona fide* guests of the owner or bareboat charterer of a pleasure vessel or yacht are not passengers. Customs also is considering revocation of its position that persons transported free of charge who are less than substantially connected with the operation, navigation, ownership, or business of a vessel are not passengers. The effect of these changes in position would be that persons considered to be passengers as a result of the changes could not be transported between United States coastwise points or in the coastwise trade except in United States coastwise-qualified vessels. Because this possible change of position could have an impact on certain members of the public, this notice invites public comments on the subject.

DATES: Comments must be received on or before October 15, 1991.

ADDRESSES: Comments (preferably in triplicate) should be addressed to, and inspected at, the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: B. James Fritz, Chief, Carrier Rulings Branch, 202–566–5706.

SUPPLEMENTARY INFORMATION:

Background

The Customs Service is reviewing its current definition of the term "passenger" for purposes of the law relating to the coastwise transportation of passengers (46 U.S.C. App. 289).

Under 46 U.S.C. App. 289—

> No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

The Customs Service has consistently interpreted this provision to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. 12106 and 12110, 46 U.S.C. App. 883, and 19 CFR 4.80).

The Customs Regulations issued under the authority of 46 U.S.C. App. 289 are found in § 4.80a (19 CFR 4.80a). This section of the Customs Regulations contains a number of definitions of terms used in § 4.80a as well as interpretations of section 289 relating primarily to the transportation of passengers by cruise vessels.

The term "passenger" is defined in § 4.50(b), Customs Regulations (19 CFR 4.50(b)), as any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

The genesis of § 4.50(b) was General Letter No. 117, dated May 20, 1916, issued by the Bureau of Navigation in the Department of Commerce, the predecessor of the Customs Service in interpreting and enforcing the coastwise laws. This General Letter contains the definition of "passenger" set forth in § 4.50(b), as used in the context of the steamboat inspection laws. The General Letter holds that wives and children of the officers of a vessel and of a company owning a vessel are not passengers, since they are considered to be connected with the ownership and business of the vessel in accordance with the definition. Nor are members of the board of directors of a corporate owned vessel, or their families, regarded as passengers for the same reason. On the other hand, stockholders and members of their families are considered passengers, deemed as not having a substantial connection with the ownership or business of the vessel.

In its application of § 289, Customs has long used the definition of "passengers" in § 4.50(b) and the general interpretations set forth above when a person is transported in a vessel without the owner or operator of the vessel receiving compensation for the transportation. Whenever such compensation is received the person transported is *prima facie* considered to be a passenger.

Pleasure Vessels

Recently it has been brought to the attention of Customs that its rulings concerning whether persons are passengers may not be internally consistent or consistent with the intent of the coastwise laws. In a ruling dated September 9, 1988 (File: 109543) published as C.S.D. 88–16, Customs held that persons who are transported as an inducement for patronage by a corporate bareboat charterer of a foreign-flag vessel are passengers and their transportation between coastwise points would be prohibited by the passenger statute, 46 U.S.C. App. 289. A bareboat charter is one in which complete management and control of the chartered vessel are transferred from the owner to the charterer for the term of the charter.

Upon reconsideration of this decision, it was determined in an unpublished letter ruling dated November 7, 1988 (File: 109781), that guests of a bareboat charterer of a pleasure vessel, who are transported for the purposes of inducing good will and anticipated new business, are not considered passengers and their transportation is not a violation of the coastwise passenger statute, in effect reversing the prior published ruling. This ruling is in accord with a line of cases extending from 1953 to the present, in which a longstanding exception has been made to the rigid definition of the term "passenger" within the meaning of the coastwise laws, for the clients or business associates as legitimate guests of the owner or bareboat charterer of pleasure yachts. Customs has held that "the entertainment of guests for the purpose of promoting good will or with the thought that those who are entertained will favor their hosts with new or increased business is a use of a vessel for pleasure purposes" and the "guests" are not considered passengers. (See rulings dated November 5, 1953; April 7, 1977 (File: 102756); May 19, 1982 (File: 105612); and October 18, 1984 (File: 107028).

With respect to persons carried on board vessels, the term "passenger" is defined in Title 46 United States Code, for purposes of vessel inspection, to include every person on board a vessel used for pleasure purposes, other than those who have not contributed any consideration, either directly or indirectly, for their carriage. See former 46 U.S.C. App. 390(a)(5), 46 U.S.C. App. 1452(5)(D), 46 U.S.C. 2101(21), and Coast Guard Regulations, 46 CFR 70.10–35(b)(5). In effect, persons on board pleasure vessels contributing such consideration as anticipated prospective business, would become passengers within the meaning of the coastwise passenger laws.

In view of the recent confusion in this area, combined with the Coast Guard provisions under which persons transported in yachts or pleasure vessels would apparently be considered passengers, Customs is considering the revocation of its position that persons transported as an inducement for patronage or good will are not passengers. If it is determined that such action is consistent with the coastwise laws and the intent of those laws, Customs would change its position and hold that passengers include persons for the transportation of whom a vessel owner or operator receives or expects to receive any compensation, direct or indirect, even if in the form of patronage or good will. This change of position would not affect Customs current position that *bona fide* guests of an owner or bareboat charterer of a pleasure vessel or yacht are not passengers for purposes of the coastwise laws.

Commercial Vessels

In further reviewing its ruling on the interpretation of the coastwise passenger law and regulations, Customs has found rulings in which persons who may have had a less than substantial connection with the operation, navigation, ownership, or business of a vessel are not passengers (e.g., rulings dated September 30, 1983 (File: 106336); April 2, 1986 (File: 108278); and September 8, 1989 (File: 110400)). If it is determined that such action is consistent with the coastwise laws and the intent of those laws, Customs would change its position to reflect that persons who are not substantially connected with the operation, navigation, ownership or business of a vessel would be considered passengers for purposes of the coastwise laws.

If Customs makes these changes of position, the applicability of the coastwise passenger statute would be broadened. Persons who would be considered "passengers" as a result of these changes of position would be required to be transported in a coastwise-qualified vessel when transported between United States coastwise points or in the coastwise trade.

Authority

Because these changes of position, if implemented, will result in some operational changes in affected business entities, Customs is giving interested parties notice and an opportunity to comment in accordance with § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)).

Request for Comments

Before making a final determination in this matter, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., room 2119, Washington, DC.

The principal author of this document was Jeff Whalen, Carrier Rulings Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development

Michael H. Lane,

Acting Commissioner of Customs.

Approved: July 3, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-19306 Filed 8-13-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[INTL-0029-91]

RIN 1545-AP70

Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM); Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking which was published in the Federal Register for Wednesday, July 17, 1991, (56 FR 32525). This proposed regulation relates to the computation and characterization of income and earnings and profits under the dollar approximate separate transactions method of accounting (DASTM).

FOR FURTHER INFORMATION CONTACT: Robert Katcher of the Office of Associate Chief Counsel (international) at (202) 566-6795 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 904, 954 and 985 of the Internal Revenue Code of 1986.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of this proposed regulation which was the subject of FR Doc. 91-26837, is corrected as follows:

1. On page 32526, column 2, under the heading "Explanation of Proposed Changes", first paragraph, line 6, the section number "989(b)" is corrected to read "989(c)".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-18638 Filed 8-13-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[INTL-870-89]

RIN 1545-A024

Earnings Stripping (Section 163(j)); Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (INTL-870-89), which was published in the Federal Register on June 18, 1991 (56 FR 27907). The proposed rules contain Income Tax Regulations relating to section 163(j) of the Internal Revenue Code, regarding "earnings stripping".

FOR FURTHER INFORMATION CONTACT: Jack Feldman (202) 566-6645 or Jeffrey Vinnik (202) 566-6442; concerning § 1.163(j)-8, Elizabeth Karzon (202) 566-6442 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contains proposed amendments to the income Tax Regulations (26 CFR part 1) under section 163(j) of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (INTL-870-89), which was the subject of FR Doc. 91-14243, is corrected as follows:

§ 1.163 [Corrected]

1. On page 27919, column 2, § 1.163(j)-5(b)(7), paragraph (iii) of *Example 1*, line 5, the language "exempt related person interest, or $300. This" is corrected to read "exempt related person interest expense, or $300. This".

2. On page 27921, column 3, § 1.163(j)-5(c)(3), paragraph (b)(3) of *Example 1*, second line from the bottom of that paragraph, the language "carried forward to their next succeeding" is corrected read "carried forward to their succeeding".

3. On page 27921, column 2, § 1.163(j)-5(c)(3), paragraph (c) of *Example 2*, first line, the language "Under Step 4, A, B, and C must allocate" is corrected to read *"Step 4 determinations.* Under Step 4, A, B, and C must allocate".

4. On page 27922, column 3, § 1.163(j)-5(c)(3), under *Example 3*, lines 3 and 4 (top of column), the language "debt-equity ratio safe harbor test described in § 1.163(j)-1(b), and that all interest expense" is corrected to read "debt-equity ratio safe harbor test, and that all interest expense".

5. On page 27922, column 2 (middle of column), § 1.163(j)-5(c)(3), paragraph (d)(2) of *Example 3*, line 2, the language "separately determined taxable incomes of A," is corrected to read "separately determined taxable income of A,".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-18639 Filed 8-13-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 52

[PS–60–91]

RIN 1545–AP84

Excise Tax on Chemicals That Deplete the Ozone Layer; Special Rule for Floor Stocks Tax Imposed in 1991

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portions of this issue of the **Federal Register** the Internal Revenue Service is issuing temporary regulations relating to the tax on chemicals that deplete the ozone layer. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by September 13, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention: CC:CORP:T:R (PS–60–91), room 5228). In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS–60–91), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Environmental Tax Regulations (26 CFR part 52) relating to secton 4682 of the Internal Revenue Code. The temporary regulations contain rules relating to the floor stocks tax on chemicals that deplete the ozone layer.

This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. For the text of the temporary regulations, see T.D 8356 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the proposed and temporary rules.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, as initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and help upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is scheduled, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–18641 Filed 8–13–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Permanent Regulatory Program; Underground Mining Permit Application Requirements—Subsidence Control Plan; Underground Mining Performance Standards—Subsidence Control

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

ACTION: Notice of public meeting.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) published a notice of inquiry seeking the views of the public and other interested parties on a potential rulemaking on the necessity for, and possible scope of, revisions to its current regulations applicable to underground coal mining and control of subsidence affecting lands and structures. OSM also published a notice that public meetings will be held in West Virginia and Kentucky. OSM is announcing that a third public meeting will be held.

DATES: The public meeting is scheduled for August 29, 1991, at 7 p.m. in St. Clairsville, Ohio.

ADDRESSES: The public meeting will be held at the Days Inn, 52601 Holiday Drive, St. Clairsville, Ohio 43950.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208–2564.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and to all other interested parties. The meeting will continue until all persons wishing to speak have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who speak at the meeting give the transcriber a written copy of their remarks.

As was announced in the **Federal Register**, OSM is seeking comments on the necessity for, and possible scope of, revisions to its current regulations applicable to underground coal mining and control of subsidence affecting lands and structures (56 FR 33170, July 18, 1991). OSM is particularly interested in public comments concerning the need to modify or provide additional guidance in such areas as the statutory distinctions and operational differences between underground and surface coal mines; the definition of "material damage" as the term is used in section 516(b)(1) of the Surface Mining Act; performance of pre-subsidence surveys; the extent of the obligation to repair of structures damaged by subsidence; replacement of water supplies damaged by underground mining; prevention of subsidence damage, even where planned subsidence is to occur; and sufficiency of bond requirements when subsidence-caused damage occurs. OSM is also particularly interested in comments on the adequacy of State laws and regulations to address these issues. Commenters should be aware that based upon a recent DOI Solicitor's opinion, the prohibitions of section 522(e) of the Surface Mining Act and 30 CFR 761.11 do not apply to subsidence.

On August 5, 1991, OSM announced in the **Federal Register** that it had scheduled two public meetings on the issues identified in the notice of inquiry (56 FR 37194). The meetings will be held on August 14, 1991, in Morgantown, West Virginia and on August 15, 1991, in Pikeville, Kentucky. OSM has been requested to hold a public meeting on these issues in Ohio. OSM has scheduled the meeting for 7 p.m. on Thursday, August 29, 1991, at the Days Inn, 52601 Holiday Drive, St. Clairsville, Ohio 43950.

Dated: August 9, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 91-19353 Filed 8-13-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3983-2]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking and proposed withdrawal of regulations.

SUMMARY: EPA today is proposing to approve a revision to the Arizona Carbon Monoxide State Implementation Plan for the Maricopa nonattainment area. Specifically, EPA is proposing approval of amendments to the Arizona State oxygenated gasoline program to increase the minimum oxygen content level to 2.7 percent by weight and changes to the State statute to limit the volatility of gasoline during wintertime to a Reid vapor pressure (RVP) of 10 pounds per square inch. These amendments and changes are contained in Arizona House Bill 2181. EPA is also proposing to withdraw, in light of the State programs, regulations on oxygenated gasoline and RVP limits that the Agency promulgated for the Maricopa area on February 11, 1991 (56 FR 5458).

DATES: Written comments on this proposal must be submitted to EPA at the address below by September 13, 1991.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: Air and Toxics Division, Technical Evaluation Section, A-2-1, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this notice, Docket No. 91-AZ-MA-1, may be inspected at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket. U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Technical Evaluation Section, A-2-1, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the SIP submittal are also available at the State office listed below: Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Technical Evaluation Section, A-2-1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1230, FTS: 484-1230.

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 1991 (56 FR 5458), EPA disapproved portions of the Arizona State Implementation Plan (SIP) and promulgated a federal implementation plan (FIP) for the Maricopa County, Arizona, carbon monoxide (CO) nonattainment area. The FIP included regulations requiring that all gasoline intended for use in motor vehicles within the Maricopa nonattainment area contain 2.7 percent (by weight) oxygen and have a Reid vapor pressure (RVP) of no more than 10 pounds per square inch (psi) during the six-month period from October 1 to March 31 starting October 1, 1991. EPA determined at that time that these two measures were necessary to bring the area into attainment of the CO national ambient air quality standard by December 31, 1991.

EPA disapproved the SIP and promulgated the FIP in response to the order of the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 893 F.2d 687 (9th Cir. 1990). For a discussion of *Delaney* and the FIP, please see the notice of proposed rulemaking, 55 FR 41204 (October 10, 1990) and the notice of final rulemaking, 56 FR 5458 (February 11, 1991).

On June 11, 1991, the State of Arizona submitted to EPA as a revision to the SIP Arizona House Bill (H.B.) 2181 which was passed by the Arizona State Legislature and approved by the Governor on May 29, 1991. This bill amends the Arizona Revised Statutes to require all gasoline sold in the Maricopa nonattainment area from September 30 to March 31 of each year starting in 1991 to contain 2.7 percent (by weight) oxygen and to have an RVP of no more than 10 psi.

EPA is today proposing to approve as part of the Arizona SIP the changes to the State oxygenated gasoline and RVP control program contained in H.B. 2181 and to withdraw the oxygenated gasoline and gasoline volatility limit regulations which it promulgated in February of this year. The Agency, however, is retaining the attainment and maintenance demonstrations and the contingency and conformity provisions of the FIP and therefore, is also retaining its disapproval of these portions of the Arizona SIP imposed on February 11, 1991.

II. Criteria for SIP Approval

EPA's primary responsibility in approving SIP revisions is to assure that such revisions do not delay timely attainment of the national ambient air quality standards (NAAQSs). Section 110(l) of the Clear Air Act (CAA) states that the "Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this Act." Therefore, before approving any SIP revision, EPA must demonstrate that the revision will not (1) delay attainment, (2) delay incremental annual emission reductions, or (3) conflict with the area's compliance with other requirements of the Act. In addition, EPA must ensure that the SIP revision is consistent with any applicable Agency policy.

A revision to an applicable implementation plan will not delay attainment if it provides for the equivalent or greater emissions reductions than the unrevised plan. It will not delay annual progress towards attainment if it provides for emission reductions on the same or faster schedule than the unrevised plan.

The final demonstrations required for approving changes to the SIP depend on the nature of the revision under consideration. For each revision, the applicable CAA requirements and Agency policies must be identified and the revision reviewed against them to ensure that it complies. For the SIP revisions under consideration in today's notice, the CAA establishes requirements for oxygenated gasoline programs and for Agency policy related

to such programs (section 211(m)). However, the Act does not address wintertime volatility control for the purpose of meeting the CO NAAQS. In addition, CAA section 211(c)(4) requires EPA to make specific findings prior to approving any fuel or fuel additive specifications as part of a state implementation plan. Both of these sections are discussed later in this notice.

III. EPA Evaluation

A. Oxygenated Gasoline Program

1. Summary of State Submittal

Arizona H.B. 2181 makes changes to the existing State oxygenated gasoline program first adopted in June, 1988. EPA approved that program on August 10, 1988 (53 FR 30224) and restored its approval on January 29, 1991 (56 FR 3220).[1] Therefore, in this notice, EPA is proposing approval of changes to an existing SIP-approved state program rather than approving an entirely new program. It is EPA's intent that the SIP reflect the State oxygenated gasoline program as amended by H.B. 2181.

H.B. 2181 modifies the existing State oxygenated gasoline program by increasing the minimum oxygen content requirement for the Maricopa area from 2.3 percent oxygen (by weight) to 2.7 percent effective September 30, 1991. See § 41–2123, Arizona Revised Statutes (A.R.S.).

H.B. 2181 also repeals portions of the State oxygenated gasoline program related to a minimum sales level of ethanol (A.R.S. § 41–2124). The minimum sales level (as amended in 1989) required that a volume of ethanol be blended into gasoline sold in the Maricopa nonattainment area equal to the volume that would be sold if 10 percent of the gasoline market contained 10 percent (by volume) ethanol. This minimum sales level of ethanol was met principally by gasoline containing 6.2 percent ethanol (by volume) which corresponded to the minimum oxygen content then required, 2.3 percent (by weight), under the Arizona oxygenated gasoline program. In this manner the sales mandate ensured that ethanol-blended gasoline was available within the Maricopa market. EPA finds that repeal of the sales mandate does not reduce the emission reductions from the program and does not represent a weakening of the currently approved SIP.

2. Comparison with Federal Regulation

The federal oxygenated gasoline program for the Maricopa nonattainment area is found at 40 CFR § 52.136 and is discussed at 56 FR 5458, 5463 (February 11, 1991). The federal program requires all gasoline sold in the Maricopa nonattainment area which is intended for the fueling of motor vehicles to contain no less than 2.7 percent oxygen (by weight) between October 1 and March 31, starting October 1, 1991. The State program as amended by H.B. 2181 also requires all gasoline sold within the Maricopa nonattainment area to contain no less than 2.7 percent oxygen (by weight) from September 30 through March 31 starting September 30, 1991. Therefore the federal and State programs have the same oxygen content standard and effectively the same start data and control season.

EPA mirrored in its federal regulations the existing exemptions in the State program. Three exemptions were included: gasoline intended for use in off-road equipment (such as airplanes, construction equipment, and farm equipment), gasoline used at manufacturer's testing grounds, and gasoline used at motor vehicle racing events. H.B. 2181 adds no additional exemptions.

Based upon the above comparison, EPA is proposing to find that the State oxygenated gasoline program is equivalent in emission reductions and control schedule to the program currently in the federal implementation plan. With the implementation of the State program on September 30, 1991, the federal oxygenated gasoline regulation found at 40 CFR 52.136 will become unnecessary to assure attainment of the CO NAAQS in Maricopa County since the federal program will entirely duplicate the amended State program; therefore, EPA is today proposing to approve the State program and to withdraw the federal program. The Agency requests comments on this proposal.

EPA recognized in the FIP that the 2.7 percent minimum oxygen content requirement was equivalent to the highest legally-permissible concentration (15 percent by volume) allowed under EPA waiver in unleaded gasoline for the most common oxygenating compound, methyl-tert-butyl ether (MTBE). Several commenters on the proposed FIP expressed concern about dilution and density effects on refinery-blended MTBE blends when they are transported via pipeline to Maricopa. EPA responded to these comments by stating that it would exercise discretion in enforcing the maximum MTBE limit by allowing a blending tolerance of up to 2.9 percent oxygen by weight at the refinery for MTBE blends intended for the Maricopa market. Under the SIP, EPA will continue to exercise discretion in enforcing the maximum MTBE limit in the EPA waiver by allowing a blending tolerance of up to 2.9 percent oxygen (by weight) in order to assure that gasolines blended with MTBE and delivered to Maricopa contain the requisite 2.7 percent oxygen.

3. Clean Air Act Amendments of 1990

The 1990 Amendments to the Clean Air Act require all CO nonattainment areas with design values of 9.5 parts per million or greater to adopt and implement by no later than November 1, 1992 an oxygenated gasoline program requiring 2.7 percent oxygen. See section 211(m)(1). The Amendments also add several requirements for the program. These include application of the program to refiners and distributors in the entire metropolitan statistical area (MSA) in which the nonattainment area is located. See section 211(m)(2). The current Arizona program as well as the amended State program being proposed for approval today applies only to the Maricopa CO nonattainment area. This nonattainment area is currently defined as the Maricopa Association of Governments urban planning area, which covers the urbanized area around Phoenix; however, the MSA is the entire county.

Under section 211(m)(2), the oxygenated gasoline program adopted by states must also include provisions for the implementation and enforcement of the program consistent with guidance to be issued by EPA. One aspect of this guidance is the guidelines required under section 211(m)(5) on the use of marketable oxygen credits. The Amendments require these guidelines to be issued by August 15, 1991. Once the guidelines are published, Arizona may amend its oxygenated gasoline program to be consistent with these guidelines.

While the oxygenated gasoline program submitted by the State meets the Amendment's 2.7 percent oxygen requirement, it does not meet these other requirements. However, the

[1] The Ninth Circuit vacated EPA's entire August 10, 1988 rulemaking approving the Arizona CO SIP because the SIP as a whole failed to show that it contained all available control measures necessary for expeditious attainment and to contain certain elements required by EPA guidance. In vacating the entire rulemaking, the court incidentally vacated EPA's approval of the individual control measures within the SIP including the State oxygenated gasoline program. On January 29, 1991, EPA restored approval of these individual measures based on their strengthening effect on the SIP. EPA believes that this action was appropriate because the court found that the SIP did not contain sufficient control measures not that it contained inappropriate measures.

Amendments give states with moderate CO nonattainment areas such as Maricopa until November 1, 1992 to implement a program consistent with the Act. EPA is today proposing to approve the State's enhancements to its oxygenated gasoline program as an equivalent substitution for the current federal program, but the Agency is not proposing to find that the enhancements meet all of the requirements of section 21(m). The State must still modify its program by November 1, 1992 or such earlier date as established by EPA to meet these CAA requirements, consistent with EPA's soon to be published guidance.

B. Gasoline Volatility Limit

1. Summary of State Submittal

Arizona H.B. 2181 requires all gasoline sold within the Maricopa nonattainment area to have a Reid vapor pressure (RVP) of no more than 10 psi from September 30 to March 31 startging in 1991.[2] Currently Arizona State law also allows a 1 psi exemption for gasolines blended with ethanol [3] but does not require a minimum ethanol content to qualify for the exemption.[4] A.R.S. § 41–2122(A). H.B. 2181 does not affect this exemption. However, Arizona Department of Weights and Measures has informed EPA that it plans to implement regulations which will require a minimum ethanol level of 7.3 percent by volume in order for a gasoline blend to qualify for the 1 psi exemption.

H.B. 2181 provides for an exemption to the RVP limit for motor vehicles used at racing events and at automobile manufactuer's proving grounds.

2. Comparison with Federal Regulation

The federal wintertime volatility limit program for the Maricopa nonattainment area is found at 40 CFR 52.137 and is discussed at 56 FR 5458, 5466 (February 11, 1991). Like the State program, the federal program requires all gasoline sold in the Maricopa nonattainment area and intended for the fueling of motor vehicles to have an RVP of no more than 10 psi between October 1 and March 31, starting October 1, 1991. Therefore the federal and State programs have the same volatility limit and effectively the same start date and control season.

Like H.B. 2181, the federal program also provides an exemption for gasoline used at automobile manufacturer's proving grounds. However, the federal regulation did not provide an exemption for motor vehicle racing events as does the State statute. This exemption, however, applies to such a small portion of the total gasoline consumption within the Maricopa nonattainment are as not to affect the emission reductions from the RVP program.

With regard to the 1 psi exemption for ethanol-blended gasolines, there is an apparent difference between the exemption provision stated in the federal program and that contained in the existing Arizona statute. The federal wintertime RVP program allows a 1 psi exemption from the 10 psi limit only for gasolines blended with 7.3 percent or more ethanol by volume (2.7 percent oxygen by weight).[5] In contrast, Arizona statute contains no specific 7.3 percent minimum ethanol content exemption provision. Therefore the only potentially significant difference between the federal and State volatility program is the form of the RVP exemption for ethanol blends.

The difference in the two exemptions could affect gasoline marketing practices in Maricopa. Under the federal program, only gasoline blended with an ethanol content equal to or greater than 7.3 percent by volume qualifies for the RVP exemption. Because this ethanol level corresponds to the minimum oxygen content (2.7 percent) required under the oxygenated gasoline program, the exemption restriction effectively limits the sale of oxygenated gasoline to blends of *either* MTBE or ethanol. Under the Arizona statute, gasolines with any ethanol content appear eligible for the 1 psi exemption if the final blend complies with the minimum oxygen content. This could expand the types of allowable gasoline to include mixed blends of ethanol and MTBE. Hence the difference between the State and federal exemption centers on the emission reduction potential of the mixed blends and their likelihood of being marketed in the Maricopa region.

Ethanol increases the volatility of the final oxygenated blend above that of the base gasoline. In fact, any concentration of ethanol above roughly 2 percent by volume blended into gasoline will result in the same absolute change in the gasoline's volatility; that is, about a 0.8 psi increase.[6] The other popular oxygenating compound, MTBE, has no significant effect on gasoline volatility.

The higher RVP of ethanol blends acts in the opposite direction of the oxygen content in reducing CO emissions. This results in ethanol-blended gasoline provided somewhat lower emission reductions than gasolines containing only MTBE when both gasoline have the same oxygen content. Therefore, smaller emission reductions might occur under the State program if that program resulted in gasoline containing less than 7.3 percent ethanol by volume being sold in the Maricopa market.[7]

From a marketing perspective, gasoline suppliers and retailers decided on that type of oxygenated blend based on a variety of considerations such as cost and supply. Unfortunately, trying to predict the market share of oxygenated gasoline is problematic given the complexity and fluctuation of the various market forces involved. Nonetheless, based on past practice, the use of ethanol in Maricopa might remain relatively constant, since the market penetration of ethanol blends has been relatively constant since the oxygenated gasoline program was initiated in 1988. There is one event, however, that could alter this tradition marketing practice.

As discussed in section III.A.3., the CAA will require oxygenated gasoline programs in many areas of the country beginning in October 1992. The significance of this requirement for Maricopa lies in its effect on gasoline refiners located in southern California, which is now scheduled to implement an oxygenated gasoline program. Nearly all of the gasoline marketed in Maricopa County originates in southern California and is transported by pipeline to a bulk terminal in Phoenix for final distribution.

In 1992 the oxygenate of choice in southern California is expected to be MTBE given the expense of transporting ethanol into that region. At the same time, an already tight MTBE supply is expected to be severely constrained due to the added large demand. This may make it advantageous for some refiners to conserve MTBE that would otherwise

[2] Prior to the passage of H.B. 2181, Arizona restricted wintertime RVP to the levels recommended by the American Society of Testing and Materials: October, 10 psi, November, 11.5 psi; December through February, 13.5 psi; March 11.5 psi.

[3] As explained later in this section, the addition of ethanol increases the volatility of gasoline by about 0.8 psi.

[4] EPA approved this State exemption on August 10, 1988 (53 FR 30224) as part of the rulemaking approving the prior State oxygenated gasoline program and restored that approval on January 29, 1991 (56 FR 3220).

[5] The existence of a federal minimum is also a feature of the RVP exemption for the ethanol blends under EPA's summer volatility standards (40 CFR 80.27).

[6] The maximum concentration of ethanol allowed under EPA waiver is 10 percent by volume.

[7] EPA believes that no gasoline containing less than 7.3 percent ethanol would be sold under the federal regulation because this world entail the refining and importing into the Maricopa area of a base gasoline with an RVP of 9 psi or less in order for the finished blend to meet the RVP limit of 10 psi. Therefore no excess emissions would result from these blends under the federal rule.

go to Maricopa County by blending ethanol in Phoenix. The advantage would be maximized by blending only ethanol in gasoline rather than a mixture of MTBE and ethanol as appears possible under the Arizona statute. Under this scenario, there may be little, if any, mixed oxygenated blends sold in Maricopa even if it is permissible. Therefore, as a practical matter, marketing practices under either the State of federal program may be substantially the same.

In addition, the State of Arizona has indicated to EPA that the Department of Weights and Measures will be adopting a regulation before September 30, 1991 that will require gasolines to contain at least 7.3 percent ethanol by volume to qualify for the 1 psi exemption within the State statute. Once adopted, this State regulation will make the Arizona statute and the federal program identical both on paper and in practice.

Based upon the above comparison, and the pending rulemaking action by the Arizona Department of Weights and Measures, EPA is proposing to find that the State gasoline volatility limit program is equivalent in emission reductions and control schedule to the federal program currently in the applicable implementation plan. With implementation of the State program on September 30, 1991, the federal volatility limit regulation found at 40 CFR 52.137 will become unnecessary to assure attainment of the CO NAAQS in Maricopa County; therefore, EPA is today proposing to withdraw it in favor of the State program. The Agency requests comments on this proposal.

The Clean Air Act places no requirements or prohibitions on control of wintertime gasoline volatility other than requiring the EPA Administrator to make certain findings under CAA section 211(c)(4).

C. Findings under Section 211(c)(4)

CAA section 211(c)(4)(A) prohibits a state prescribing or attempting to enforce any control or prohibition on any characteristic or component of a fuel additive for the purposes of motor vehicle emission control,

(i) if the Administrator has found that no control or prohibition of the characteristic of component of a fuel or fuel additive under (section (c)(1)) is necessary and has published his finding in the **Federal Register** or

(ii) if the Administrator has prescribed under (section 211(c)(1)) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

Under the first test, EPA has in fact made the opposite demonstration that the oxygen content and wintertime RVP limit *are necessary* for expeditious attainment of the CO NAAQS in Maricopa County, by promulgating such regulations for Maricopa in the **Federal Register.** Under the second test, EPA has concluded, as described above, that the State rules are essentially identical to those prescribed by EPA.

Section 211(c)(4)(C) allows a state to prescribe and enforce controls or prohibitions on the use of a fuel or fuel additive for the purposes of motor vehicle emission control if the applicable implementation plan allows for it. Section 211(c)(4)(C) also states that the Administrator may approve such provisions in an implementation plan only,

> "if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve the standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable."

As part of its FIP rulemaking, EPA has already made the findings necessary under section 211(c)(4)(C). EPA evaluated fifty-five measures for controls which it could effectively implement and which could bring about attainment "as soon as possible" as required by the court in *Delaney.* From its evaluation, EPA found that oxygenated gasoline program and the wintertime RVP limitation, combined with existing SIP measures, would result in attainment by late 1991 [8] and that no other combination of measures available to EPA would result in attainment any earlier. Included as part of this evaluation were several measures (e.g., mandatory no drive days) that could have brought about attainment earlier yet were rejected because of their adverse economic or social impacts. Since the State rules are equivalent to the federal rules, EPA need not make any additional findings under section 211(c)(4)(C).

[8] Although the 1990 CAA Amendments would otherwise provide an attainment date of December 31, 1995 for Maricopa, EPA determined that the late 1991 date was the appropriate attainment date for its finding because the *Delaney* standard of "attainment as soon as possible" is the controlling standard for the Arizona CO federal implementation plan.

IV. Retention of the FIP Provisions

EPA is retaining the attainment demonstration and the contingency and conformity provisions of the FIP because the State has submitted no substitute attainment demonstration or measures. These provisions were published on February 11, 1991 (56 FR 5458).

V. Withdrawal of Federal Regulations

EPA is proposing to withdraw the federal oxygenated gasoline program (40 CFR 52.136) and wintertime gasoline volatility limit (40 CFR 52.137) it promulgated on February 11, 1991 for the Maricopa CO nonattainment area. EPA is making this proposal because the State has not submitted revisions to State statutes for equivalent programs. Once these State programs are implemented on September 30, 1991, EPA's regulations become unnecessary for attainment and maintenance of the CO NAAQS in the Maricopa area. To leave the federal regulations in place would complicate compliance and enforcement of the programs within Maricopa County and would be unnecessarily redundant. In addition, giving preference to the State programs is consistent with the Clean Air Act intent that states have primary responsibility for the control of air pollution within their borders. See section 101(a)(3).

VI. Regulatory Process

Under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. See 46 FR 5476 (February 11, 1991) for a discussion of the impact of oxygenated gasoline and RVP rules on small entities in Maricopa County.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Mobile sources.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 5, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-19082 Filed 8-13-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0E3901 and 1E3924/P525; FRL-3927-6]

RIN 2070-AC18

Pesticide Tolerances for Norflurazon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to remove tolerances for regionally restricted registration of the herbicide norflurazon in or on the raw agricultural commodities asparagus and avacodos and add them for nonregionally restricted registration. This amendment was requested by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number (PP 0E3901 and 1E3924/P525), must be received on or before September 13, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document 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: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: Tolerances for the combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone] and its desmethyl metabolite 4-chloro-5-(amino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone in or on the raw agricultural commodities asparagus (at 0.05 part per million (ppm)) and avocados (at 0.2 ppm) were established in the **Federal Register** of April 23, 1986 (51 FR 15323). The tolerances were established in support of registration for use of norflurazon on asparagus in Michigan and Washington, and on avocados in Florida, based on the geographical representation of the residue data available at the time the tolerances were established.

Additional field residue data were submitted by IR-4 for asparagus from New Jersey, California, and Arizona, and for avocados from California. These data show that use of norflurazon in other production areas is not likely to result in residues in excess of the established tolerances for asparagus (0.05 ppm) and avocados (0.2 ppm). It is, therefore, no longer necessary for the Agency to regionally restrict registration for use of norflurazon on these commodities. To allow geographical expansion of the registration of norflurazon on asparagus and avocados, the Agency is amending 40 CFR 180.356 by deleting the tolerances for regional registration for asparagus and avocados in paragraph (a), which contains tolerances for norflurazon without regionally restricted registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed amendments to the tolerances include:

1. A 6-month feeding study in dogs fed diets containing 0, 50, 150, and 450 ppm with a no-observed-effect level (NOEL) of 150 ppm (equivalent to 3.75 milligrams (mg)/kilogram (kg)/day) based on relative liver weight increase.

2. A 2-year feeding/carcinogenicity study in rats fed diets containing 0, 125, 375, and 1,025 ppm with a NOEL of 375 ppm (equivalent to 18.75 mg/kg/day) based on decreased survival, decreases in 2,3-diphosphoglyceric acid value, increased liver weights, and increases in blood urea nitrogen in males in the high-dose level group. High-dose female rats showed increased absolute liver, kidney, and ovary weights as well as a variety of histopathological changes. No carcinogenic effects were observed under the conditions of the study at any dosage level tested.

3. A 2-year feeding study in mice fed dosages of 0, 85, 340, and 1,360 ppm with a systemic NOEL of 340 ppm (equivalent to 51 mg/kg/day) based on an increase in liver-to-body weight ratios and increased incidence of nodular hyperplasia and hypertrophy of the liver. Norflurazon was associated with a statistically significant increase in hepatocellular tumors in male mice in the high-dose group. No dose-related carcinogenic effects were observed in female mice at any dosage level tested.

4. A three-generation reproduction study in rats with a reproductive NOEL of 375 ppm (equivalent to 18.75 mg/kg/day) based on reduced fertility, gestation, and viability indices.

5. A developmental toxicity study in rabbits fed 0, 10, 30, and 60 mg/kg with a maternal NOEL of 30 mg/kg/day, a fetotoxic NOEL of 10 mg/kg/day based on decreased fetal weight and incomplete ossified variations. The NOEL for developmental toxicity is 10 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 100, 200, and 400 mg/kg/day with no maternal, fetotoxic, or developmental toxicity observed under the conditions of the study.

7. Mutagenic studies (including gene mutation assays in microorganisms, chromosomal aberrations in cultured Chinese hamster ovary (CHO) cells, and unscheduled DNA synthesis test in rat hepatocytes) were all negative.

8. A metabolism study in rats indicates that much of the chemical was excreted within 4 days, with less than 1 percent of the dose remaining in the tissues 96 hours after dosing.

Based on a weight-of-the evidence determination, the Agency has classified norflurazon as a possible human carcinogen (Category C). This classification is based on the Agency's Risk Assessment Guidelines, published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has determined that for purposes of risk characterization the reference dose (RfD) approach should be used for the quantification of human risk. This determination is based on the presence of benign tumors in only one sex of one species at one dose level, adequate but negative mutagenicity data, and no positive finding of carcinogenicity in structurally related compounds.

The RfD, based on the 6-month feeding study in dogs (with an NOEL of 3.75) and using an uncertainty factor of 100, is calculated to be 0.04 mg/kg of body weight (bwt)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.002038 mg/kg/day. Published tolerances utilize 5 percent of the RfD for the overall U.S. population and 23 percent of the RfD for nonnursing infants. The established tolerances for asparagus and avocados utilize less than 0.1 percent of the RfD.

The nature of the residue is adequately understood, and an

adequate analytical method, gas-liquid chromatography using an electron-capture detector, is available for enforcement purposes. An analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since asparagus and avocados are not considered livestock feed commodities. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the proposed amendments to the tolerances established by amending 40 CFR 180.356 would protect the public health. Therefore, it is proposed that the tolerances be amended as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, (PP 0E3901 and 1E3924/P525). All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule 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 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.356 is amended by removing paragraph (c) and alphabetically inserting the tolerance listings for avocados and asparagus in paragraph (a), to read as follows:

§ 180.356 Norflurazon; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Asparagus	0.05
Avocados	0.20
* * * * *	

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[FR Doc. 91-18970 Filed 8-13-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR PART 280

[FRL-3983-5]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a proposed rule to amend the financial responsibility requirements for under ground storage tanks (USTs) containing petroleum that appeared in the **Federal Register** on October 26, 1988 (53 FR 43322), as amended October 31, 1990 (55 FR 46022). Specifically, EPA proposes to modify the compliance dates under 40 CFR 280.91(d). Under the modification, all petroleum marketing firms owning 1–12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers with net worth of less than $20 million will be required to comply with the requirements of 40 CFR part 280 subpart H—Financial Responsibility—as of December 31, 1992. This date corresponds with the projected date of compliance for local governments, which will be one-year after promulgation of the additional mechanisms for local governments rule which was proposed on June 18, 1990 (55 FR 24692). Today's proposed rule would extend the deadline from the previous date of October 26, 1991. This change would provide additional time for the development of financial assurance mechanisms (especially, State assurance funds) to enable this group to comply.

DATES: Comments are due September 13, 1991.

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST-3), Office of Underground Storage Tanks (OS-400), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments received by EPA may be inspected in the public docket, located in room 2427 (Mall), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (703) 920-9810 in Virginia. For technical questions, contact Andrea Osborne in the Office of Underground Storage Tanks at (703) 308-8883.

SUPPLEMENTARY INFORMATION: On October 26, 1988, EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). In the final rule, EPA established a phased schedule of compliance for owners and operators of petroleum USTs. Petroleum marketing firms with 1–12 USTs at more than one facility or fewer than 100 USTs at a single facility, local government entities, and non-marketers whose net worth is less than $20 million were required to comply with the financial responsibility requirements by October 26, 1990. The principal reason for adopting the phased compliance approach was to provide the time necessary for providers (including private insurance companies and States intending to establish State assurance funds) of financial assurance mechanisms to develop new policies and programs or conform their policies and programs with EPA requirements. (see 53 FR 43324).

On October 31, 1990, EPA published regulations (55 FR 46022) that granted an additional one-year extension of the compliance deadline to marketers with 1 to 12 USTs at more than one facility or fewer than 100 USTs located at a single facility and non-marketers whose net worth is less than $20 million. Local governments were granted an extension

until one year after the promulgation of the additional mechanisms for local governments final rule. Additional mechanisms for local governments were proposed on June 18, 1990 (55 FR 24692).

Since October 1990, EPA has continued to monitor the development of financial assurance markets, especially (1) insurance for corrective action and third party liability and (2) state assurance funds, to determine whether financial assurance mechanisms are becoming available to satisfy the needs of the regulated community. Based on this on-going review, EPA believes that tank owners required to comply by October 26, 1991, need additional time to meet insurers' standards for coverage. Also, States need additional time to develop state assurance funds, to submit them to EPA for review and approval as financial assurance mechanisms, and to make any modifications necessary for approval. Therefore, EPA is proposing to extend the compliance date for marketers with 1–12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers whose net worth is less than $20 million from October 26, 1991 to December 31, 1992. The Agency believes that this 14-month extension for Category IV tank owners will provide adequate time for tank owners and operators to obtain assurance. At the start of the October 1990 extension, EPA had approved 14 state assurance funds and had begun to review 11 State assurance funds that were submitted to EPA for approval. (It is important to note that upon submission of a fund, owners and operators in that State are considered to be in compliance with the federal financial responsibility requirements unless and until EPA disapproves the fund.) During the subsequent eight months, an additional 8 State assurance funds have been approved by EPA to serve as financial responsibility compliance mechanisms. Currently, 22 State assurance funds have been approved by EPA and 12 State assurance funds have been submitted to EPA for approval. EPA expects the rate of State fund development to continue at a similar pace during the proposed 14-month extension.

Additionally, States will have more time to develop and implement financial assistance programs (e.g., direct loan programs, loan guarantee programs, grant programs) which in turn make it easier for owners and operators to get insurance. The State of Oregon, for example, is in the final stages of adopting a grant program targeted to Category IV owners and operators.

I. Authority

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

II. Background

When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to ensure financial capability for cleaning up or redressing UST releases and the necessary time for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. Petroleum marketers owning or operating 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth were required to comply by January 24, 1989, based primarily on their ability to qualify for self-insurance. Petroleum marketers with 100–999 USTs were required to comply by October 26, 1989. These marketers were estimated to be relatively more likely to be able to obtain insurance; some of them were also expected to qualify as self-insurers. Petroleum marketers owning 13–99 USTs at more than one facility were originally required to comply by April 26, 1990. However, On May 2, 1990, the Agency published a Rule (55 FR 18566) extending the compliance date to April 26, 1991. These marketers were thought to be less likely to be able to obtain insurance than members of the October 26, 1989, compliance group. Petroleum marketers owning or operating fewer than 13 USTs at more than one facility or owning or operating only one facility with fewer than 100 USTs, and UST owners and operators who were not petroleum marketers (including local government entities) were required to comply by October 26, 1990. This group was expected to rely primarily on state assurance funds for compliance. On October 31, 1990, EPA provided a one-year extension of the compliance date for small marketers (marketers with fewer than 13 USTs or fewer than 100 USTs at a single facility) and small non-marketers (non-marketers with less than $20 million in net worth). This extension was based on the rate of development of State funds. In addition, EPA granted local governments an extension of the compliance deadline until one-year after promulgation of a final rule with additional mechanisms for local governments to demonstrate compliance. Additional mechanisms for local governments were proposed on June 18, 1990 (55 FR 24692).

Through monitoring the development of financial assurance mechanisms, the Agency has learned more about the way insurers operate in the UST insurance market. EPA now believes that the extended compliance date for Category IV tank owners (marketers owning 1–12 USTs or fewer than 100 USTs at one facility and non-marketers whose net worth is less than $20 million) did not allow adequate time for compliance. When devising the original and revised phased compliance schedule, the Agency expected that members of this compliance group would rely on insurance and state funds. The Agency had originally believed that 24 months from promulgation of the final financial responsibility rule would provide adequate time for owners and operators to upgrade their USTs to meets insurers' requirements and for states to develop and submit funds to EPA. Since promulgation of the final rule, however, EPA has learned that tank owners and operators require additional time to comply with conditions imposed on them by the insurance industry. Some of these conditions include operation of only tanks younger than 15 years of age, clean site conditions, and reliable method of leak detection, etc. For example, some insurers have informed EPA that they have rejected UST coverage applications because of existing contamination, poor tank management, and inadequate leak detection monitoring. Many members of this compliance group may not be able to meet these standards by October 26, 1991, and thus would be required to seek an alternative financial assurance mechanism.

Consequently, the Agency believes that more members of this compliance group than the Agency had originally projected must rely on state assurance funds, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. In order for owners and operators to rely on state assurance funds as compliance mechanisms, States must submit their funds to EPA.

At this time, EPA has approved 22 state assurance funds to serve as financial responsibility compliance mechanisms that provide full or partial coverage; 12 more have formally submitted their funds to EPA for approval. At this time, nine States have not submitted their state funds for approval and seven States (and the District of Columbia) do not yet have legislation allowing the establishment of

a State assurance fund. Since many of the members of this compliance group must rely on State assurance funds to comply with the requirements, additional time is needed to allow States to develop and submit their funds to EPA for approval.

In addition to state assurance funds which serve as financial responsibility compliance mechanisms, some States are considering financial assistance programs, such as grant programs and loan programs, that will allow UST owners to meet the costs of upgrading their facilities to meet insurance underwriting standards. Alternatively, the State of Washington has implemented a reinsurance program, under which the State relies on private insurers to sell insurance but provides reinsurance coverage to limit the insurers' risk and reduce premium costs.

By extending the compliance date for this group to December 31, 1992, owners and operators will have additional time to meet insurers' standards and States will have additional time to submit their State assurance funds to EPA for approval or to develop alternative assistance programs. Thus, owners and operators will be able to take advantage of a wide variety of mechanisms to comply with the financial responsibility requirements.

The Agency is soliciting comments on today's regulatory amendments. EPA specifically solicits comments on (1) whether all or only a subset of the facilities now subject to the October 26, 1991, deadline should be granted an extension, and (2) whether a shorter or longer extension should be granted. Comments may be submitted on or before September 13, 1991.

III. Mechanisms Considered But Not Proposed

In addition to the proposed rule, EPA considered two additional options to grant relief to UST owners and operators. Under the first option a subset of entities required to comply by October 26, 1991 would be granted an additional extension.

Under the second option, any UST owner or operator meeting certain conditions as determined by the States would get an extension.

Option 1: Creation of a New Category for Rural Petroleum Marketers Providing Essential Services

Under this option, retail marketers in Category IV that provide essential services such as being the sole source of petroleum products for a rural community would be granted an extension of the compliance deadline of up to 90 days following the final date for compliance with the technical standards for new tanks (i.e., March 22, 1999). Owners and operators must generally meet these technical requirements (which include tank upgrading, leak detection, etc.) to qualify for private insurance or for coverage under certain State funds.

To be eligible for the additional extension until March 22, 1999, a facility would need to (1) sell petroleum products on a retail basis, (2) be the sole provider of a class of petroleum transportation fuels (e.g., gasoline or diesel fuel) within a 25–mile radius, and (3) meet certain environmental criteria such as that the underground storage tank not be too close to groundwater or that the percentage of the local population that relies on groundwater as their drinking water source not exceed a certain number.

EPA considered this option after reviewing certain State financial assistance programs, such as a grant program offered by the State of Washington to rural marketers providing an essential community service, that suggest that states are developing programs specifically aimed at helping these kinds of facilities. In addition, analyses conducted by EPA to support the Report to the Senate Appropriations Committee on the status of availability of financial assurance mechanisms shows that many rural areas depend on a single source of motor fuel, the failure of which could lead to significant economic and social impacts on the community as a whole.

EPA has decided not to propose this option at this time for several reasons. First, establishing an appropriate, enforceable definition of a "sole provider" may be difficult. Second, the current lack of availability of financial responsibility mechanisms affects a wide variety of facilities, not just rural retail motor fuels dealers. Thus, promulgation of this option might not provide adequate relief to the affected community as a whole. Third, the efforts being undertaken by many States to provide additional assistance to these facilities suggests that, over the longer term, rural marketers may be as able to comply with the proposed regulatory schedule as are other facilities. Fourth, most rural communities depend on ground water supplies for drinking water and irrigation. Thus, an inability by a rural owner or operator to perform corrective action in the event of a release may pose a greater direct threat to human health and the environment in rural areas than in urban areas served primarily by centrally treated water supplies. This tendency, however, may be somewhat offset by the lower population densities in rural areas. That is, the greater distances between people and wells in rural areas may serve to insulate ground water wells to a greater extent than in urban areas.

EPA solicits comments on this option, specifically on (1) the feasibility of extending compliance deadlines for facilities that meet certain criteria, (2) appropriate definitions of "sole provider" and "rural area," (3) the appropriate length of time to extend the compliance deadline, and (4) the specific environmental criteria to be used.

Option 2: Extending the Deadline for Specific Facilities in States Where Certain Findings are Made

Under this option, EPA would extend the federal deadline for *any* facility, regardless of its compliance category, if the state makes certain findings based on federally determined criteria. The extension would last up to 90 days following the final date for compliance with the technical standards for new tanks (March 22, 1999). The specified criteria could include facilities that (1) Have been identified by states as entities which are in need of an extension, (2) sell petroleum products on a retail basis, (3) are the sole provider of a class of petroleum transportation fuels (e.g., gasoline or diesel fuel) within a 25-mile radius, and (4) meet certain environmental criteria such as that the underground storage tank not be too close to groundwater or that the percentage of the local population that relies on groundwater as their drinking water source not exceed a certain number. Under this option, the federal extension could also be granted to local governments, especially those in isolated rural areas that provide essential community services (e.g., public health and safety). Additionally, EPA may allow extensions for Indian tribes owning and operating USTs on Indian lands or to owners and operators of USTs on Indian lands that provide essential services.

The advantage of this option is that each state would be in the position of enabling some facilities to delay compliance based upon its own unique circumstances. States are in a better position to know both the progress of owners and operators in upgrading tanks to meet insurance underwriting criteria as well as the status of the development of their own state programs to assist owners and operators, and are thus in a better position to know whether an extension of the deadline will act to promote compliance.

EPA solicits comments on this option, specifically (1) the feasibility of extending compliance deadlines for any facility that meets specified criteria; (2) the appropriate criteria for determining which facilities qualify for an extension, including appropriate definitions of "sole provider" and "rural area", as well as the appropriate environmental criteria and the appropriate criteria for determining whether a facility needs an extension; (3) the impact that this option would have on the progress of the development of state funds and state financial assurance programs; (4) the appropriate length of the extension for facilities that meet the specified criteria.

I. Economic Impacts

This section provides an estimate of the economic impacts of the proposed rule. Because the proposed rule will not cause an annual impact on the economy of $100 million or more and will not cause an increase in the costs of production or the prices charged by the affected community, a Regulatory Impact Analysis is not required. Instead, EPA has prepared an economic impact analysis to estimate the number of affected facilities and the costs to affected facilities under the proposed and alternate options, and has evaluated the impacts on small businesses as required by the Regulatory Flexibility Act.

A. Economic Impact Analysis

The economic analysis examines the potential economic effects of extending the compliance deadline. It provides an estimate of the number of potentially affected entities, a comparison of the financial condition of affected entities with and without a State assurance fund, and an analysis of rural stations.

EPA analyses have suggested that a large number of USTs and UST-owning entities are subject to the October 26, 1991 deadline. Of the approximately 1.7 million USTs subject to the technical and financial responsibility standards, about 790,000 are owned by petroleum marketers with 12 or fewer USTs, or by non-marketers with net worth of less than $20 million. These USTs are located at about 216,000 facilities, and are owned by about 213,000 firms (for an average of 3.8 USTs per owner). As a result, the extension of the compliance deadline will affect a significant proportion of the UST-owning population.

The development of State assurance funds and State financial assistance programs provides relief to UST owners and operators, particularly those with fewer facilities and USTs. Small service stations (including single-outlet stations) required to obtain private insurance or otherwise cope with the cleanup costs without state aid face potentially severe impacts. EPA estimates that 45 percent of small stations could suffer severe financial distress, and 41 percent could fail. (The figure for severe financial distress includes those firms that would fail; thus, about 90 percent of those firms suffering financial distress would fail.) Small stations in rural areas may be even more heavily affected, because they tend to have a smaller revenue base and are less financially robust than stations in metropolitan areas.

In general, State assurance funds can reduce instances of failure over the next ten years if their deductibles are small enough. Funds with $10,000 deductibles can reduce failures from 41 percent to only 14 percent. Funds with $50,000 deductibles are predicted to reduce failures by a much smaller amount. State financial assistance programs that help firms upgrade their USTs can also help by alleviating some of the burden associated with obtaining insurance.

It has been suggested to the agency on several different occasions that rural stations provide indispensable services to their local communities and that the impacts of the UST regulations are felt disproportionately on rural areas. EPA examined this issue using data on four largely rural States (Colorado, North Dakota, South Dakota, and Wyoming) where these problems are likely to be worst. By mapping the locations of the service stations in theses States, EPA was able to count the number of instances in which localities with only one or two stations are long distances (25 to 50 miles) from the nearest alternative sources of fuel. EPA found no localities that do not have at least one alternative source of fuel within a 50 mile radius. Because the states selected are among the most sparsely settled, EPA believes that there are virtually no localities in the U.S. whose residents would not be able to find an alternative source of fuel within a 50 mile radius. EPA did find a very small number of localities whose nearest alternative fuel source was more than 25 miles away, but estimates that there are no more than about one hundred localities in the country in this situation.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires all federal agencies to review the impact of their regulations to determine whether the regulations will have a significant economic impact on a substantial number of small entities. If so, the Agency must prepare a Regulatory Flexibility Analysis. EPA believes that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed extension of the compliance date will provide relief to members of this compliance group by allowing them additional time to comply with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: August 5, 1991.

For the reasons set out in the preamble, EPA proposes to amend part 280 of title 40 of the Code of Federal Regulations as set forth below.

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h).

2. Section 280.91 is amended by revising paragraph (d) to read as follows:

§ 280.91 Compliance dates.

* * * * *

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; December 31, 1992.

* * * * *

[FR Doc. 91–19205 Filed 8–13–91; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–232, RM–7755]

Radio Broadcasting Services; Antlers and Wilburton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Blue Mountain Broadcasting seeking the substitution of Channel 279C1 for Channel 279A at Wilburton, Oklahoma, the modification of its construction permit for Station KZUD to specify operation on the higher powered channel and the substitution of Channel 284A for unoccupied and unapplied for Channel 281A at Antlers, Oklahoma. Channel 279C1 can be allotted to Wilburton in compliance with the Commission's minimum distance separation requirements with a site restriction of 36.2 kilometers (22.5 miles) west to avoid short-spacings to Channel 276C2, Atoka, Oklahoma, which is reserved for Station KHKC–FM, Station KKYK, Channel 279C, Little Rock, Arkansas, and Station KKIX, Channel 280C1, Fayetteville, Arkansas, at coordinates North Latitude 34–59–06 and West Longitude 95–41–53. Channel 284A can be allotted to Antlers without the imposition of a site restriction, at coordinates 34–13–54 and 95–38–06. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 279C1 at Wilburton or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 30, 1991, and reply comments on or before October 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Southmayd, Simpson & Miller, 1233 20th Street, NW., suite 205, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–232, adopted July 29, 1991, and released August 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–19369 Filed 8–13–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–231, RM–7233]

Radio Broadcasting Services; Odessa, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for the rule making filed by Oil Patch Broadcasting Partnership proposing the allotment of Channel 299C2 to Odessa, Texas, as an additional FM service to the community. Channel 299C2 can be allotted to Odessa in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.8 kilometers (17.9 miles) south to avoid a short-spacing to a construction permit (BPH–890712MK) for Station KYMI(FM), Channel 300C2, Los Ybane, Texas. Since Odessa is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested. The coordinates for Channel 299C2 at Odessa are North Latitude 31–36–44 and West Longitude 102–28–21.

DATES: Comments must be filed on or before September 30, 1991, and reply comments on or before October 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Matt Edwards, Oil Patch Broadcasting Partnership, c/o National Cellular, 301 Route 17N, 4th Floor, Rutherford, New Jersey 07070 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 654–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–231, adopted July 29, 1991, and released August 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 AND 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–19370 Filed 8–13–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 229

[Docket LI–7; Notice 3]

RIN 2130–AA53

Event Recorders

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Postponement of public hearing date.

SUMMARY: On June 18, 1991 (56 FR 27931), FRA published a proposed rule to improve the safety of railroad operations and to enhance the quality of

information available for post accident investigations by requiring event recorders on passenger trains and on heavy, fast freight trains. FRA is postponing the date for the public hearing in this rulemaking proceeding until September 12, 1991. No postponement in the September 20, 1991 due date for written comments is anticipated.

DATES: *Public hearing:* A public hearing will be held at 10 a.m. on September 12, 1991. Persons desiring to make an oral statement at the hearing should notify the Docket Clerk before September 11, 1991.

ADDRESSES: The public hearing will be held in rooms 6244, 6246, and 6248, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons making statements at the hearing should provide five copies of their remarks at the hearing.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Deputy Associate Administrator for Safety, RRS–2, room 8320A, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–0897) or Thomas A. Phemister, Office of Chief Counsel, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–399–0635).

SUPPLEMENTARY INFORMATION: On June 18, 1991 (56 FR 27931), FRA published a Notice of Proposed Rulemaking (NPRM) in this docket. That publication listed a public hearing on August 22, 1991. One of the interested parties to this rulemaking requested a postponement of the hearing date due to a conflict with a previously scheduled event vital to the business of that party.

FRA is seeking the maximum possible public participation in this proceeding and has granted the request to postpone the hearing date. However, FRA is also interested in reaching a decision in this matter without further delay and no postponement in the due date for written comments, now set for September 20, 1991, is anticipated.

Issued in Washington, DC, on August 8, 1991.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 91–19269 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting: Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands For The 1991–92 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands for the 1991–92 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end August 29, 1991.

ADDRESS COMMENTS TO: Director (FWS/MBMO), U.S. Fish and Wildlife Service, room 634-Arlington Square, Washington, DC 20240. Comments received, if any, on these proposed special hunting regulations and tribal proposals will be available for public inspection during normal business hours in room 634-Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240 (703/358–1773).

SUPPLEMENTARY INFORMATION: In the March 15, 1991, **Federal Register** (56 FR 11336), the U.S. Fish and Wildlife Service (Service) requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1991–92 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

The guidelines provide for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource.

For the past several hunting seasons, 1987–88 through 1990–91, the Service has reached an agreement with the Mille Lacs Band of Chippewa Indians in Minnesota for hunting by tribal members on their lands. Similar agreements have been reached with

other tribes in other hunting seasons. Tribes are encouraged to work with the Service in developing agreements for management of migratory bird resources on tribal lands.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is normally too small to have significant impacts on the migratory bird resource when compared with the large off-reservation sport harvest by non-Indians.

An area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse harvest impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include: (a) Details on the harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and they were made final beginning with the 1988–89 hunting season (Thursday, August 18, 1988; 53 FR 31612). It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

The Service notes that duck numbers again last year were not substantially changed from those of the previous two years, largely because of poor reproduction caused by a long period of drought in the Prairie Pothole Region of Canada and the United States. The extended drought has been especially severe, and for conservation purposes, duck hunting regulations were again restrictive during the 1990–91 hunting season. Although ground water conditions have improved somewhat, preliminary results of recent breeding population surveys indicate little overall improvement in duck population status, and restrictive hunting regulations can be expected again for the 1991–92 season.

Hunting Season Proposals From Indian Tribes and Organizations

For the 1991–92 hunting season, the Service received requests from twelve (12) tribes and Indian organizations that followed the 1985 proposal guidelines and were appropriate for publication in the **Federal Register** without further and/or alternative actions. In addition, the Service received proposals or other correspondence from the Klamath Tribe (Oregon), the Confederated Tribes and Bands of the Yakima Indian Nation (Washington) and the Mille Lacs Band of Chippewa Indians (Minnesota). The Mille Lacs Band forwarded a copy of the Memorandum of Understanding between the Service and the tribe with regard to migratory bird hunting during the 1991–92 season. The Service intends to seek further dialogue with the other two tribal groups to develop mutually acceptable hunting regulations and/or to formalize Service-tribal agreements for multi-year tribal formulation of regulations and management of the waterfowl resource. The Service actively solicits regulatory proposals from other tribal groups that have an interest in working cooperatively in the interest of waterfowl and other migratory game birds.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. Unlike previous years, there will be a final rule published later in an August 1991 **Federal Register** that will include tribal regulations for the early hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. Then, there will be a final rule published in a September 1991 **Federal Register** that will include regulations for late season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species. In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, the daily bag and possession limits for ducks in some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same that will be permitted the State(s) in which the tribal hunting area is located. The proposed frameworks for early-season regulations are scheduled for July publication in the **Federal Register**, and these final Federal frameworks will be published in early August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final Federal frameworks for the late season will be published in a mid-September **Federal Register**. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established.

As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

The proposed regulations for the twelve (12) tribes with proposals that meet the Service's criteria are shown below.

1. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applies only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size.

In a June 13, 1991, memorandum, the Service's Region 5 Office conveyed the Penobscot's 1991–92 migratory bird hunting season proposal to the Service Director. The tribe again requests special regulations for tribal members in Penobscot Indian Territory, an area of

trust lands that includes but is much larger than the reservation. These additional lands were acquired by the tribe as a result of the 1980 Maine Indian Claims Settlement. The tribe is proposing a 1991–92 sustenance hunting season of 78 days (September 14–November 30), with a daily bag limit of 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members would be only the larger of the two daily bag limits. All other Federal regulations would be observed by tribal members, except that shooting hours would be from one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting within Penobscot Indian Territory would adhere to the waterfowl hunting regulations established by the State of Maine.

The Service notes that the regulations requested by the tribe are nearly identical to those established last year and proposes to approve the tribal request.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. The proposed seasons and bag limits would be more conservative than allowed by the Federal frameworks of last season. As previously stated, Federal frameworks for this current season have not been determined due to the fact that 1991 waterfowl production figures are not known at present. However, based on existing information they are unlikely to be less conservative than those of the 1990–91 season.

In a May 12, 1991, proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1991–92 hunting season and a closing date of November 30, 1991. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. However, it is proposed that no canvasbacks are to be allowed in the bag. Also, the tribe requested that the goose season be closed. The tribe conducts a harvest survey each year, and the duck harvest has been small.

The requested regulations are the same as were established last year, and the Service proposes to approve the tribe's request for the 1991–92 hunting season.

3. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. In the past, the tribe has observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribe is developing a wildlife management program, and in a May 14, 1991, proposal, requested special waterfowl hunting regulations for the 1991–92 hunting season. The regulations would apply to both tribal members and nonmembers hunting on tribal and trust lands within the external boundaries of the reservation. The tribe requested a continuous duck season, beginning on October 19 and ending on November 30, 1991, and/or with the maximum number of days and the same daily bag and possession limits permitted in the Low Plains portion of South Dakota, under final Federal frameworks to be announced. The requested hunting season dates would be within Federal frameworks. The harvest is expected to be low because of the small number of hunters.

The tribe requested that the goose hunting season begin on October 12, 1991, and extend through January 5, 1992. The daily bag and possession limits would be as established by South Dakota in the Missouri River Zone.

The Service proposes to approve the tribal proposal and to continue the requested duck hunting regulations on an experimental basis, and asks that the tribe again survey the harvest to ensure that hunting activity and harvest stay as low as anticipated.

4. Yankton Sioux Tribe, Marty, South Dakota

On June 6, 1991, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1991–92 season, including special goose regulations for both tribal members and nonmembers hunting on tribal and trust lands.

The tribe has requested a continuous Canada, snow and white-fronted goose hunting season for tribal members, beginning on October 19, 1991, and ending on January 12, 1992. Daily bag limits for tribal members during the period October 19 through November 16 are 1 Canada goose and 1 white-fronted goose and 5 snow geese. For the period November 17 through January 12, for tribal members, the proposed daily bag limits are 2 Canada geese or 1 Canada goose and 1 white-fronted goose and 5 snow geese. For non-tribal hunters, the season(s) and bag limits will be in accordance with State seasons and bag limits, except for the special extended goose season. A special extended goose season is proposed within the Yankton Sioux Reservation. This season begins at the close of the regular goose season, December 23, 1991, in Goose Hunting Unit 2 and extends through January 12, 1992. During this extended season, hunting for geese is allowed only in the special hunting zone established by the Yankton Sioux Tribe in the area commonly known as the Chalk Rock Colony. All bag limits and other regulations apply. Maps for this zone will be available at the Bureau of Indian Affairs office in Wagner, South Dakota.

The duck, coot and swan hunting regulations proposed by the Yankton Sioux Tribe include seasons and bag limits are in accordance with those set by the State of South Dakota, for both tribal and non-tribal hunters. The season in Unit 1 extends from October 6 through November 13, 1991, and in Unit 2 from October 27 through December 4, 1991. The boundary of Unit 2 within the Yankton Sioux Reservation is the area south of CFAS 6198 (Geddes Highway), west of FAS 6516 to Lake Andes and south of SD 50 from Lake Andes to the Bon Homme County Line.

Possession limits for ducks, coots and geese are twice the daily bag limits and shooting hours are from sunrise to sunset.

The Service proposes to approve the Yankton Sioux proposal for the 1991–92 hunting season, with a requirement that the tribe continue to monitor the harvest of Canada and white-fronted geese by tribal members and nonmembers.

5. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full widlife management authority. In a June 3, 1991, letter, the tribe requested regulations that are somewhat changed from those adopted last year. The hunting zone for waterfowl has been redefined from reservation-wide to a more limited area, and the proposed goose hunting season length is being reduced from 72 days in 1990–91 to 51 days in 1991–92. The open area is described as: The entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. All other waters of the

reservation would be closed to waterfowl hunting.

The tribe is proposing a continuous duck, coot, merganser, gallinule and moorhen hunting season for 1991–92, with an opening date of November 9, 1991, and a closing date of January 5, 1992. The tribe requested a daily duck bag limit of 6, of which 2 may be either redheads or canvasbacks, or 1 of each. In addition, 1 pintail and 3 mallards, only 1 of which may be a hen, may be taken as a part of the daily bag limit. The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate.

For geese, the season is proposed to extend from November 16, 1991, through January 5, 1992. Hunting is limited to Canada geese, and the daily bag limit is 2.

There is no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands. Season dates for band-tailed pigeons and morning doves would run concurrently from September 1 through September 30, 1991, in Wildlife Management Units 7 and 10, only. Proposed bag limits are 5 and 10 daily, for band-tailed pigeons and mourning doves, respectively.

Possession limits for the above referenced species are twice the daily bag limits, and shooting hours are from one-half hour before sunrise to sunset. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The regulations requested by the tribe are similar to those approved last year, and the Service proposes to establish them again for the 1990-91 hunting season.

6. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide additional protection to mallards and pintails; the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1991–92 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. In a June 3, 1991, proposal, for the 1991–92 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribal proposal for the above seasons was stated such that if the same number of hunting days are permitted as last year (59) the season would run continuously with a later opening (October 12, 1991) and a later closing (January 12, 1992).

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes proposed that, if the same number of hunting days are permitted as in previous years (93), the season would have a later opening (October 12, 1991) and a later closing date (January 12, 1992) than last year.

The Service notes that the requested regulations are nearly the same as those approved last year and proposes to approve the tribes' request for the 1991–92 hunting season.

7. The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington

The Tulalip Tribes are the successors in interest to the Shohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. The Service has had discussions with the Tulalip Tribes over the past year on tribal migratory bird harvest regulations, and we believe the outcome proposed here serves the best interests of the Tulalip tribally managed hunt and the migratory bird resource, at this particular time.

In a letter dated May 20, 1991, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1991–92 seasons as follows.

For ducks and coot, the proposed season for tribal members is from September 1, 1991, through January 31, 1992. In the case of non-tribal hunters hunting on the reservation, the season is the latest closing date and the longest period of time allowed for the State of Washington under final Federal frameworks, to be announced. Daily bag and possession limits for Tulalip Tribal members are to be 6 and 12 ducks, respectively except that for pintail, harlequin, canvasback, blue-winged teal and wood duck the bag and possession limits will be the same as those established in accordance with the final Federal frameworks for the State of Washington. For non-tribal hunters, bag and possession limits will be the same as those permitted the State of Washington under final Federal frameworks, to be announced.

For geese, tribal members are proposed to be allowed to hunt from September 1, 1991, through January 31, 1992. Non-tribal hunters are to be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks, to be announced. For tribal hunters, the goose daily bag and possession limits are proposed to be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese are to be those established in accordance with final Federal frameworks for the State of Washington, to be announced. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits are those established in accordance with final Federal frameworks for the State of Washington, to be announced.

For snipe, the proposed open seasons follow those regulations for ducks, coot and geese given above. For both tribal and non-tribal hunters, snipe daily bag and possession limits are proposed to be set at 6 and 12, respectively.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, and an number of other regulations enforced by the tribe.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, a rough estimate of past harvests indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service intends to concur with the Tulalip Tribe's request for the above seasons and requests that the harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

8. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. Beginning with the 1985 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California.

In a June 27, 1991, proposal, the tribes requested split dove seasons with regulations as follows. The early season is proposed to begin on September 1 and end on September 15, 1991, with the bag limits being ten (10) mourning or ten (10) white wing doves singly or in the aggregate. The late season for doves is proposed to open on November 17 and close on December 31, 1991, with the bag limit being ten (10) mourning doves. A possession limit is twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to sunset, and other special tribally set regulations would apply.

The duck regulations proposed are the same as those approved last year. Again this year, as manifested by survey data, the population status of ducks appears to be insecure. Consequently, while the regulations frameworks for ducks have not been announced, it is likely that restrictive regulations will be necessary for the 1991–92 hunting season. Therefore, the Service proposes to establish the same migratory bird hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations would apply both to tribal and non-tribal hunters.

9. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

During the past four years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. By mutual agreement, waterfowl hunting regulations on the reservation have been the same as established for the Montana area of the Pacific Flyway and included provision for the customary early closure of the goose season on a portion of the reservation. In a May 17, 1991, letter, the Service was informed by the Confederated Salish and Kootenai Tribes that a four-year agreement had been signed with the State of Montana regarding fishing and hunting management and regulation on the Reservation.

In the May 17 letter, the tribes requested that the Service approve special regulations for the 1991–92 waterfowl hunting season. As in the past, the regulations for non-tribal hunters would be at least as restrictive as for the Pacific Flyway portion of the State and, if circumstances warrant, would provide for early closure of goose hunting.

The requested season dates and bag limits are similar to the regulations of the past 4 years and it is anticipated there will be no significant changes in harvest levels. A large majority of the harvest is by non-tribal hunters. The Service proposes to approve the tribes' request for special migratory bird regulations for the 1990–91 hunting season.

10. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a July 19, 1991, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 1991–92 hunting season: for ducks, Canada Geese, coots and common moorhens (gallinules), common snipe, band-tailed pigeons, and mourning and white-winged doves. The Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits permitted Pacific Flyway States under final Federal frameworks to be announced.

In addition, the tribe proposes to require tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation. The Service proposes to approve the Navajo Nation request for these special regulations for the 1991–92 migratory bird hunting seasons.

11. Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin

This current hunting season marks the first year that the Service and the Oneida Tribe are cooperating to establish uniform regulations for migratory bird hunting by tribal hunters within the original reservation boundaries. Since 1985, the Oneida Conservation Department has enforced their own hunting regulations within those original reservation limits. However, the Oneida Tribes has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same.

In a June 6, 1991, letter to the Service, the tribe proposed special waterfowl hunting regulations. For ducks, the tribe proposed that, due to recent poor production from the prolonged drought, duck regulations will coincide with those of the State of Wisconsin.

The goose season is proposed to run from September 1 through November 11, 1991. Bag limits are two (2) tribally tagged Canada geese per day; the tribe will reissue 2 tags as each 2 birds are registered. The Oneida Conservation Department is recommending a season quota of 150 geese taken. If that quota is attained before the season concludes, the Department recommends closing the season early.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

12. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the Great Lakes Indian Fish and Wildlife Commission requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The

States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service believes that this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that the tribal harvest was small, the Service has approved special regulations since the 1987–88 hunting season on ceded lands in all three States.

On May 22, 1991, the Great Lakes Indian Fish and Wildlife Commission again requested off-reservation special migratory bird hunting regulations for the ceded areas, and copies of the proposal were mailed to officials in the affected States of Michigan, Minnesota, and Wisconsin. The proposed regulations are shown below. The proposal contains only minor season date changes from 1990–91 for the treaty areas located in Michigan, Minnesota, and Wisconsin. These changes would move opening and closing dates to the same weekday as in the 1990–91 season, and are not expected to increase harvest levels. New regulations proposed for the Bay Mills Indian Community, Michigan, in the 1836 treaty area will parallel those for the State of Michigan.

Because of depressed population numbers and drought-related habitat problems in 1990, the Service believes there is a need to continue to provide protection for duck populations. Preliminary survey results for 1991 indicate that duck numbers will remain at depressed levels, and it is likely that restrictive duck regulations will be necessary again in the 1991–92 season. The Service believes that a final decision on the appropriate opening date of the duck season should be deferred until ongoing surveys of duck populations have been completed. In their letter of May 22, the GLIFWC, because of these concerns, have deferred proposing daily bag limits pending results of breeding ground surveys.

In this letter, the Commission also included an approved Memorandum of Agreement designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. The Memorandum of Agreement is intended to have long-term application.

Also, the proposal contains changes in references from State and Federal regulations to parallel regulations of chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. In effect, regulations are not changed by this change in reference.

In a June 30, 1991, letter, the Wisconsin Department of National Resources (Department) voiced a nonobjection to the proposed regulations for hunting by Chippewa Tribal members with regard to the opening dates of the duck and goose seasons, for the present. However the State reserved the right to modify its position pending further development of 1991 waterfowl production information. The Department again requested that tribal members honor the noon opening of the shooting hours on the first day of the State's duck season opener, and comply with Wisconsin's open-water hunting restrictions. The Service received no written or oral communications regarding the proposal from the States of Minnesota and Michigan.

The Commission's proposed 1991–92 waterfowl hunting season regulations are as follows:

Ducks

A. Wisconsin and Minnesota Zones: *Season Dates*: Begin September 23 and end November 3, 1991.

Daily Bag Limits: Deferred pending results of breeding ground surveys.

B. *Michigan, 1842 Treaty Zone*: Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

C. *Michigan, 1836 Treaty Zone*: Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

Mergansers

A. *Wisconsin and Minnesota Zones*: *Season Dates*: Begin September 23 and end November 3, 1991.

Daily Bag Limits: 5, including no more than 1 hooded merganser.

B. *Michigan, 1842 Treaty Zone*: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit is 5, including no more than 1 hooded merganser.

C. *Michigan, 1836 Treaty Zone*: Same dates and season length permitted the State of Michigan for this area under Federal frameworks. The daily bag limit is 5, including no more than 1 hooded merganser.

Geese: Canada Geese

A. *Wisconsin and Minnesota Zones:* *Season Dates:* Begin September 16 and end December 1, 1991.

Daily Bag Limit: 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. Daily bag limit is 5.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Geese: Blue, Snow and White-fronted Geese

A. *Wisconsin and Minnesota Zones:* *Season Dates:* Begin September 17 and end December 1, 1991.

Daily Bag Limit: 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

B. *Michigan. 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit is 7 minus the number of Canada geese taken and including no more than 2 white-fronted geese.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit is 7 minus the number of Canada geese taken and including no more than 2 white-fronted geese.

Other Migratory Birds: Coots and Common Moorhens (Common Gallinules)

A. *Wisconsin and Minnesota Zones:* *Season Dates:* Begin September 23 and end November 3, 1991.

Daily Bag Limit: 20, singly or in the aggregate.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit is 20, singly or in the aggregate.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Sora and Virginia Rails

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 24 and end November 3, 1991.

Daily Bag Limit: 25 singly, or in the aggregate. Possession limit is 25.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. Daily bag limit is 25 singly, or in the aggregate. Possession limit is 25.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. Daily bag limit is 25, singly or in the aggregate. Possession limit is 25.

Common Snipe

A. *Wisconin and Minnesota Zones: Season Dates:* Begin September 23 and end November 3, 1991.

Daily Bag Limit: 8.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit is 8.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit is 8.

Woodcock

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 3 and end November 20, 1991.

Daily Bag Limit: 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit is 5.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit is 5.

H. General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles* versus *State of Wisconsin* regarding migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements, 50 CFR Part 20 and shooting hour regulations in 50 CFR Part 20, Subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to M.S. 100.29, subd. 18 (duck blinds and decoys). Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

Public Comment

There was no public comment provided to the Service for the Notice of Intent published on March 15, 1991, to promulgate a rulemaking with regard to regulations for migratory bird hunting by American Indian tribal members.

Based on the results of recently completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations beginning as early as September 1, 1991, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comment. Two considerations compress the time in which this rulemaking process must operate: The need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1991, and on the other hand, the unavailability before late July of specific reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 29, 1991 is impracticable and contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 29, 1991 will be considered.

NEPA Consideration

Pursuant to the regulations of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the

Federal Register on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the Federal Register on June 16, 1988, (53 FR 22562), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On Monday, May 13, 1991 (at 56 FR 22100), the Service published the final rulemaking on nontoxic shot zoning for the current and future years. This rule, titled "Nationwide Requirement to Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991–92 Season" provides that all of the waterfowl harvest beginning this year will occur in nontoxic shot zones. This final rule also reminded hunters that nontoxic shot use is required in all U.S. offshore territorial waters and for the taking of captive-reared mallards on shooting preserves, in field trials and for bona fide dog training activities. All of the proposed hunting regulations covered by this proposed rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * * Consequently, the Service has initiated Section 7 consultation under the Endangered Species Act for the proposed hunting seasons on Federal Indian reservations and ceded lands. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in and/or are available to the public from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the Federal Register dated March 6, 1991 (56 FR 9462), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that this rule will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240. As noted in the Federal Register, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authorship

The primary author of this proposed rulemaking is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991–92 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Dated: August 1, 1991.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–19303 Filed 8–13–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 157
Wednesday, August 14, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 17–18, 1991.

Time: 8:30 a.m.–5 p.m., October 17, 8:30 a.m.–12 Noon, October 18.

Place: Conference Room 104–A, Administration Building, Department of Agriculture, Washington. DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: H.L. Shands, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, room 331, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–3311.

Done at Beltsville, Maryland, this 6th August 1991.

Henry L. Shands,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 91–19252 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–03–M

Agricultural Research Service

Notice of Intent To Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant a partially exclusive license to Cellulose Technologies, Inc., Worthington, Ohio, on U.S. Patent Application Serial No. 06/864,920, "Method and Apparatus for Forming Three Dimensional Structural Components from Wood Fiber," issued as Patent Number 4,702,870. Notice of Availability was given on January 14, 1988.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the **Federal Register.**

ADDRESSES: Send comments to: USDA-ARS-Office of Cooperative Interactions; Beltsville Agricultural Research Center; Baltimore Boulevard; Building 005, room 401–A, BARC–W; Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to Cellulose Technologies, Inc., a partially exclusive license to practice the aforementioned invention. Patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Cellulose Technologies Inc., has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7a. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 91–19361 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–03–M

Office of International Cooperation and Development

Agribusiness Promotion Council; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet from 1 p.m. to 5 p.m. on Tuesday, October 1, 1991 and on Wednesday, October 2 from 9:30 a.m. to 4 p.m. The meeting will be held in room 104–A Administration Building, U.S. Department of Agriculture. The agenda for the meeting includes: report on previous activities, discussion of issues of concern to the entire Council, and recommendations on the future direction of the program and specific projects. The meeting is open to the public. The public may participate as time and space permit.

Comments may be submitted to Dr. Duane Acker, Administrator, Office of International Cooperation and Development, until September 15, 1991. Further information may be obtained by calling Avram E. Guroff, Assistant to the Administrator, Office of International Cooperation and Development, (202) 245–5855.

Done at Washington, DC this 2nd day of August 1991.

Duane Acker,

Administrator.

[FR Doc. 91–19255 Filed 8–13–91; 8:45 am]

BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of

Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 1992.

Antidumping duty proceedings and firms	Periods to be reviewed
Hungary:	
Tapered Roller Bearings, A–437–601, Magyar Gordulocsapagy Muvek	6/1/90–5/31/91
Japan:	
Spherical Plain Bearings, A–588–604, Nachi Fujikoshi	5/1/90–4/30/91
Countervailing Duty Proceedings:	
None	

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: August 7, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–19356 Filed 8–13–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–806]

Amendment to Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Fischl, 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) 377–1778.

AMENDMENT TO THE FINAL DETERMINATION: We are amending the final determination of the antidumping duty investigation of gene amplification thermal cyclers and subassemblies thereof (GATCs) from the United Kingdom (56 FR 32172, July 15, 1991) to announce the Department's negative determination of critical circumstances and to correct a clerical error in the calculations.

Scope of Investigation

The products covered by this investigation are certain gene amplification thermal cyclers, consisting of Peltier-effect in vitro GATCs, whether assembled or unassembled, and the subassemblies thereof. For a complete description of the merchandise covered by this investigation, see Final Determination of Sales at Less Than Fair Value:

Gene Amplification Thermal Cyclers and Subassemblies Thereof (56 FR 32172, July 15, 1991)

Final Negative Determination of Critical Circumstances

M.J. Research, petitioner, alleged the existence of critical circumstances in its November 30, 1990, petition. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining if there is a history or knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more, as being sufficient to satisfy the requirements of section 733(e)(1)(A). (See, e.g., Final Determination of Sales at Less Than Fair Value: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, 56 FR 241, January 3, 1991). Since there are no outstanding antidumping orders on GATCs from the United Kingdom, or elsewhere, and the final dumping margin is less than 25 percent, we cannot find a history, nor impute knowledge, of dumping under section 733(e)(1)(A). Therefore, in accordance with section 733(e)(1), we determine that critical circumstances do not exist with respect to imports of the subject merchandise from the United Kingdom.

Clerical Error Allegation

On July 23 and 24, 1991 we received submissions from respondent, LEP Scientific Limited (LEP), timely filed, alleging that the Department erred in calculating the foreign market value (FMV). Specifically, LEP claimed that:

(1) When calculating credit, the Department should have used the date of the final determination as payment date for home market sales with outstanding payment dates, as it did in the U.S. market; and

(2) The Department should not have applied a U.S. dollar/pound sterling conversion factor to the reported U.S. duty since the duty was already reported in U.S. dollars.

Regarding the first allegation, we disagree with LEP that any clerical error was made. Regarding the second clerical error allegation, we agree that the currency conversion factor was applied incorrectly. Although LEP's July 6, 1991, submission indicated that U.S. duty was incurred in pounds sterling, the amounts reported in the data base were verified to have been denominated in U.S. dollars. Therefore, pursuant to section 735(e) of the Act, we are correcting the ministerial error published in our final determination of sales at less than fair value.

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 773(d) of the Act, of all entries of GATCs as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for

consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the GATCs from the United Kingdom exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The amended weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage	Critical circumstances
LEP Scientific Limited	13.43	No.
All others	13.43	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we will make 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 in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to GATCs, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all GATCs from the United Kingdom, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This amended final determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(e) (1991) and 19 CFR 353.23(c).

Dated: August 8, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19354 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by one respondent, one unrelated importer, and petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Japan. The review covers four manufacturers/exporters of the subject merchandise to the United States during the period October 1, 1989, through September 30, 1990. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Baker, Joseph Hanley, Maureen Price, or Paul McGarr, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (55 FR 40901). One respondent, one unrelated importer, and the petitioner requested an administrative review. We initiated the review on December 10, 1990 (55 FR 50739), with amendment on April 18, 1991 (56 FR 15856), covering the period October 1, 1989, through September 30, 1990. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review include tapered roller bearings (TRBs) and parts thereof, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the outstanding dumping finding covering certain TRBs from Japan four inches or less in outside diameter, and certain components thereof (A-588-054), are not included within the scope of this order, except for those manufactured by NTN. This order includes all TRBs and parts thereof, as described above, that are manufactured by NTN Toyo Bearing Co., Ltd. (NTN). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers TRB sales by Koyo Seiko Company, Ltd. (Koyo), NSK Ltd. (formerly Nippon Seiko, K.K.) (NSK), Nachi-Fujikoshi Corporation (Nachi), and entries of merchandise manufactured by NTN, and entered by Caterpillar during the period October 1, 1989, through September 30, 1990. Nachi reported no shipments. Because the Department did not establish a separate rate for Nachi in the antidumping investigation and Nachi has never before been subject to administrative review, we have assigned Nachi a rate of 63.63 percent. This rate, commonly referred to as the All Others rate, is the rate applicable to those companies for which we have not conducted an investigation or review.

United States Price

The Department used exporter's sales price (ESP) for Koyo and NSK and purchase price (PP) for NTN's sales to Caterpillar, as defined in section 772 of the Tariff Act, to calculate United States price. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, discounts, warranties, technical service expenses, imputed consumption tax, rebates, packing expenses incurred in the United States, and indirect selling expenses (which include discounts, inventory carrying costs, warehouse transfer expenses, advertising, and other selling expenses). We also adjusted ESP for value added by further manufacturing, including an allocation of profit earned on U.S. sales. No other adjustments were claimed or allowed.

Purchase price for NTN's sales to Caterpillar was based on the sales price to an unrelated purchaser in the United States, Caterpillar. We made adjustments to U.S. price for brokerage and handling, foreign inland freight, and imputed consumption tax. No other adjustments were claimed or allowed.

Foreign Market Value

The Department used the home market price, as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV).

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. In consideration of the significant volume of home market sales involved in this review, we used an average of respondents' home market sales for the entire period in accordance with section 777A of the Tariff Act. To determine whether an annual average is representative of the transactions under consideration, we compared the monthly weighted-average home market price for each product with the weighted-average price for each product for the entire review period. Because the weighted-average price for each model sold by Koyo and NSK over the entire period did not vary meaningfully from the monthly weighted-average prices of sales, we consider weighted-average prices over the entire period to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by Koyo and NKS on an annual weighted-average basis, in accordance with section 777A of the Tariff Act.

Some of NTN's U.S. entries during the period were made pursuant to sales contracts pre-dating the period, so we tested the stability of NTN'S home market sales which were contemporaneous with the dates of the contracts. This required testing a period of four years and six months, including the period of review. The home market sales were divided into four periods of twelve months and one period of six months. The weighted-average home market price for each model in each twelve or six month period did not vary meaningfully from the monthly weighted-average prices in the same period. We preliminarily determine that the twelve month of six month weighted-average prices were representative of the transactions and a single FMV was calculated for each period, within the meaning of section 777A of the Tariff Act.

When we used home market sales as the basis of comparison, we based FMV on packed, F.O.B., ex-factory or delivered price to related purchasers (where an arm's length relationship was demonstrated) and unrelated purchasers in the home market. NTN's sales to related purchasers were not made at arm's length prices and were consequently not used in the analysis. We made adjustments, where applicable, for inland freight, credit, discounts, commissions, warranty, and differences in physical characteristics. For comparison of ESP sales, we adjusted FMV for indirect selling expenses (which include post-sale price adjustments and rebates) in the home market to offset indirect selling expenses on ESP sales in the United States, and for the imputed U.S. consumption tax. We limited the indirect selling expenses deduction on home market sales by the amount of the indirect selling expenses incurred in the United States. We added packing expenses incurred in Japan for U.S. sales, and imputed consumption tax to FMV. For comparison to purchase price sales, we added U.S. packing, credit, and imputed consumption tax to the FMV.

Based on petitioner's allegations, we investigated whether NTN, NSK, and Koyo sold such or similar merchandise in the home market at prices below the cost of production. In accordance with section 773(b) of the Tariff Act, we used constructed value as the basis for FMV when an insufficient number of home market sales were made at prices above the cost of production.

We calculated constructed value in accordance with section 773(e) of the tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the actual selling, general, and administrative expenses (SG&A) were less than the statutory minimum of ten percent of the cost of manufacture (COM), we calculated SG&V as ten percent of the COM. Where the actual profits were less than the statutory minimum of eight percent of the cost of manufacture plus SG&A, we calculated profit at eight percent of the sum of COM plus SG&A. We adjusted the constructed value for selling, credit and packing expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period October 1, 1989, through September 30, 1990:

Manufacturer	Margin (percent)
Koyo Seiko, K.K.	32.17
NSK, Ltd.	4.09
NTN (Caterpillar)	63.68
Nachi-Fujikoshi Corporation	[1] 63.68

[1] No shipments during the period.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of TRBs from Japan.

For any shipments of this merchandise manufactured by NTN and imported by Caterpillar, the cash deposit will be 63.68 percent. In general, we do not establish importer-specific cash deposit rates. However, due to many reasons, we have not completed our analysis of NTN's exports to the Untied States to importers other than Caterpillar. Because we did not wish to delay issuance of our preliminary results of review, we have included sales by NTN to Caterpillar for the review period, and, therefore, we are establishing a preliminary cash deposit rate in this notice. Shipments of TRBs manufactured by NTN and not imported by Caterpillar will continue to have a cash deposit requirement of 36.53 percent, which was established by the antidumping duty order, as amended.

For any future entries of this merchandise from an exporter not covered in this or any previous review, and who is unrelated to any reviewed

firm, the cash deposit of 63.68 percent shall be required.

These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 8, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19355 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-357-004]

Carbon Steel Wire Rod from Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 7, 1991, the Department of Commerce published a notice of preliminary results of countervailing duty administrative review on carbon steel wire rod from Argentina. We have now completed that review and determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the suspension agreement during the period January 1, 1989 through December 31, 1989.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Males, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 26387) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on carbon steel wire rod from Argentina (51 FR 44649; December 11, 1986). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of carbon steel wire rod from Argentina. During the period of review, such merchandise was classifiable under items 7213.20.00, 7213.31.30, 7213.39.00, 7213.41.30, 7213.49.00, and 7213.50.00, of the Harmonized Tariff Schedule ("HTS"). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and three programs: (1) The "Reembolso;" (2) Pre-Export Financing; and (3) Post-Export Financing.

This review covers Acindar Industria Argentina de Aceros S.A. ("Acindar"), the only known exporter of carbon steel wire rod from Argentina to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from respondent and petitioners (Atlantic Steel Co., Bethlehem Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company), respectively.

COMMENT: Acindar requests that the Department confirm the claim made by the company during verification that, even if Acindar had received the maximum rate of indirect tax rebate payable under the "reembolso" program, such rate still would not have been excessive compared to the actual amount of indirect taxes paid by Acindar and, therefore, would not have conferred a countervailable benefit.

Petitioners contend that the Department should reject Acindar's request in view of the basic legal principle that administrative bodies must limit their decisions solely to the issues before them and not reach unnecessary conclusions.

Department's Position. We agree with petitioners. Acindar did not request prior to verification that the Department re-examine the issue of what rate of indirect tax rebate ("reembolso") is allowable under the terms of the suspension agreement. Therefore, our purpose at verification was limited to ascertaining that the "reembolso" was not excessive. As stated in our preliminary determination, we verified that the rate of "reembolso" received by Acindar on wire rod was, in fact, not excessive. Since we found both Acindar and the Government of Argentina to be adhering to the terms of the agreement, any further investigation of this issue would have exceeded the scope of this review. We also agree with petitioners that we cannot make decisions on issues that have not been examined.

Final Results of Review

After considering the comments received, we have determined that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the suspension agreement during the period January 1, 1989 through December 31, 1989.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of Commerce regulations (19 CFR 355.22).

Dated: August 8, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19357 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-504]

Carbon Steel Wire Rod from New Zealand; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") has terminated the countervailing duty administrative review of carbon steel wire rod from New Zealand, initiated on April 18, 1991 (56 FR 15856).

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 28 and March 29, 1991, respectively, Pacific Steel Ltd., respondent, and Ferrostaal Metals

Corporation, an interested party, requested a countervailing duty administrative review of carbon steel wire rod from New Zealand for the period October 1, 1989 through September 30, 1990. No other interested party requested the review.

On April 18, 1991, the Department initiated the administrative review for that period (56 FR 15856). Pacific Steel, Ltd. and Ferrostaal Metals Corporation withdrew their requests for review on July 17, 1991. As a result, the Department has terminated the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: August 8, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-19358 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-001]

Ferrochrome from South Africa; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") has terminated the countervailing duty administrative review of ferrochrome from South Africa, initiated on April 18, 1991 (56 FR 15856).

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Barbara E. Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On April 1, 1991 Macalloy Corporation and the Ferro Alloys Producers' Association of South Africa (FAPA) requested a countervailing duty administrative review of ferrochrome from South Africa for the period January 1, 1990 through December 31, 1990. On April 18, 1991, the Department initiated the administrative review for that period (56 FR 15856). Because FAPA was unable to demonstrate that all of its members are producers, exporters, or U.S. importers of the subject merchanise, the Department determined that FAPA is not an interested party within the meaning of 19 CFR 355.2 and did not have standing to request an administrative review pursuant to 19 CFR 355.22. See, *America Grape Growers Alliance for Fair Trade* v. *United States*, 9 CIT 389 (1984). No other interested party requested the review. Macalloy Corporation withdrew its request for review on July 17, 1991, pursuant to 19 CFR 355.22(a)(3). As a result, the Department has terminated the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

August 8, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-19359 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-05-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-3A001."

The Office of Export Trading Company Affairs has received the following application for a third amendment to Export Trade Certificate of Review #87-00001, which was issued on April 10, 1987 (52 FR 12587, April 17, 1987), and previously amended on March 25, 1988 (53 FR 10267, March 30, 1988) and August 20, 1989 (54 FR 36848, September 5, 1989).

Summary of the Application

Applicant: American Film Marketing Association ("AFMA"), 12424 Wilshire Boulevard; suite 600, Los Angeles, California 90025, Contact: Jefferson C. Glassie, Legal Counsel, telephone (202) 223-4400.

Application No.: 87-3A001.

Date Deemed Submitted: August 7, 1991.

AFMA seeks to amend its Certificate to:

1. Add each of the following companies as a "Member" within the meaning of § 325.2(l) of the Regulations (15 FR 325.2(l)): Alice Entertainment, Inc., Solvang, CA; Beyond International Group, Los Angeles, CA; Broadstar International, Hollywood, CA; The Summit Group, Santa Monica, CA; Curb/Esquire Films, Burbank, CA; Full Moon Entertainment, Los Angeles, CA; Largo Entertainment, Los Angeles, CA; Lone Star Pictures, Dallas, TX; Pentamerica Communications, Inc., Los Angeles, CA; Promark Entertainment, Los Angeles, CA; Quixote Productions, Los Angeles, CA; The Robert Lewis Company, Los Angeles, CA; Saban International, Burbank, CA; SC Entertainment International, Toronto, Ontario, Canada; Scotti Brothers Pictures, Santa Monica, CA; Sovereign Pictures, Inc., Los Angeles, CA; Sunny Film Corporation SDN BHD, Taman Desa, Kuala Lumpur, Malaysia; Telefilm Canada, Beverly Hills, CA; Titan International Licensing, N.V., Los Angeles, CA; Trans Atlantic Distribution, L.P., Los Angeles, CA; 21st Century Film Corporation, Los Angeles, CA; and World Films, Inc., Los Angeles, CA.

2. Delete each of the following companies as a "Member" of the

Certificate: Atlantic International; Australian Films International, Inc.; Alexander Beck Ents., Inc.; Bandcompany; Cineplex Odeon Films International; Cinevest Entertainment Group, Inc.; Earl Owensby Studios; Empire International; Esquire Films, Inc.; Euramco International, Inc.; Ferde Grofe Films, Inc.; Film Ventures Int'l., Inc.; Filmaccord, Inc.; Filmation Associates; J.E.R. Pictures, Inc.; Lorimar-Telepictures Corporation; Marshall Entertainment; Nova International Films; Okco/Trilogy Licensing Corp.; Pathe Films N.V.; Premiere Film Marketing; Simcom Int'l., Inc.; Trans World Entertainment; Vestron International Group; Vidmark Entertainment; and Virgin Vision Ltd.

3. Change the listing of the company name of the following current "Members" as follows: Change A.I.P. Distribution, Inc. to AIP Studios; Carolco International, N.V. to Carolco Pictures; Concorde/New Horizons to Concorde/Motion Picture Corporation; De Laurentiis Entertainment Group to Dino De Laurentiis Communications Inc.; Film & Television Company to I.N.I. Entertainment Group Inc.; Goldfarb Distributors, Inc. to GDP, Inc.; J&M Film Sales to J&M Entertainment; M.C.E.G./Manson Int'l. to M.C.E.G. Virgin Vision Ltd.; MGM/UA Distribution Co. to MGM/UA Entertainment Company; New Line Int'l Releasing to New Line Cinema Corporation; New World Pictures Inc. to New World International; Viacom International, Inc. to Viacom Pictures, Inc.; and K.R.G. Film Sales to Kings Road International.

Dated: August 8, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-19360 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagics Species Plan Development Team (Team) will hold public meetings on Friday afternoons every other week between August 16 and November 8, 1991 (i.e., August 16, August 30, September 13, September 27, October 11, October 25, and November 8). Unless otherwise notified, the meetings will begin at 1 p.m., and will be held at the National Marine Fisheries Service Southwest Fisheries Science Center, 8604 La Jolla Drive, La Jolla, CA. The Team will discuss the development of a coastal pelagic species fishery management plan which will include anchovy, sardines, Pacific mackerel and jack mackerel.

Individuals interested in attending should contact Team Cochairpersons Larry Johnson at (619) 546-7117 or Patricia Wolf at (213) 590-5175 before making plans to attend because any of the above meetings could be cancelled on short notice.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: August 8, 1991.

Joe P. Clem,

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

[FR Doc. 91-19320 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Advisory Committees will hold public meetings on August 26-29, 1991, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC. The Council is scheduled to approve Amendment #5 to the Snapper-Grouper Fishery Management Plan (FMP), (wreckfish limited entry) for submission to the Secretary of Commerce for final approval. Public comments on the amendment will be taken on August 28, at 3:30 p.m.

The Shrimp Committee will review a preliminary shrimp management plan and decide on which options to take to public hearings, possibly in October. Options the Council is considering are federal closures at the request of states during severe freeze years, a requirement for a federal permit to harvest shrimp outside state waters and a definition of overfishing. The Council will submit a control date with the plan to alert the public to the possibility of a limited entry program for white shrimp.

The Snapper-Grouper Committee is scheduled to review the status of Amendment #4 to the Snapper-Grouper FMP and the harvest of the wreckfish quota, and will develop recommendations for appointments to the snapper-grouper assessment review group.

The Habitat Committee will review and adopt draft revised habitat policy, procedures and priorities. The Flounder Committee will develop recommendations to the Mid-Atlantic Council on management measures to include in Amendment #2 to the Summer Flounder FMP. The Mackerel Committee will review and approve options for Amendment #6 to the Mackerel FMP for public hearings in late fall.

On August 26 from 4 p.m. to 5:30 p.m., the Advisory Panel Selection Committee will meet in a closed session (not open to the public) to review candidates and select new members for the wreckfish, summer flounder, mackerel and sea scallop advisory panels.

A detailed agenda is available to the public. For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: August 8, 1991.

Joe P. Clem,

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

[FR Doc. 91-19321 Filed 8-13-91; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Hawaii Pelagics Advisory Panel (HPAP) will hold a public meeting on August 14, 1991, at the Hawaii Maritime Center, Pier 7, Pacific Room, Honolulu, Hawaii.

The HPAP will review, discuss and make recommendations, (where appropriate) to the Council on the following: (1) Amendment No. 5 to the Pelagics Fishery Management Plan—50 and 75 mile closure around the Main Hawaiian Islands to prevent gear conflicts; (2) enforcement of emergency and amendment regulations; (3) tag and release program for Pacific Blue Marlin; (4) mandatory program to collect catch and effort information from all pelagic fishermen; (5) proposed amendment No. 6 to the Pelagics Fishery Management Plan—including tuna; (6) proposed Kahoolawe Island National Marine Sanctuary; and (7) other business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: August 8, 1991.

Joe P. Clem,

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

[FR Doc. 91–19322 Filed 8–13–91; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Issuance of Permit; U.S. Fish and Wildlife Service (P45H)

On August 30, 1990, notice was published in the **Federal Register** (55 FR 35448) that an application had been filed with the National Maritime Fisheries Service by U.S. Department of the Interior, Fish and Wildlife Service, Fisheries and Federal Aid, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, for a permit to take winter-run chinook salmon for scientific purposes.

Notice is hereby given that on August 8, 1991, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act.

The permit is available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: August 8, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–19285 Filed 8–13–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Modification; College of the Atlantic (P322B)

Modification No. 1 to Permit No. 735

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 735 issued to Dr. Steven K. Katona, College of the Atlantic, 105 Eden Street, Bar Harbor, ME 04609, on June 14, 1991 (56 FR 19350), is modified in the following manner:

A. Number and Kind of Marine Mammals

Item A.2 is changed to read:

2. Tissue samples collected in U.S. waters may be exported to Canada, Denmark and Italy. Collaborating scientists from these countries may import samples for comparative analyses.

Item A.4 is added:

4. Up to 300 minke whales *(Balaenoptera acutorostrata)* may be taken annually during close approach to collect 50 skin biopsies and photographs.

B. Special Conditions

All Conditions attached as sections B and C to Permit No. 735 shall remain in force and effect.

This modification becomes effective upon signature.

The permit and modification documentation are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Northeast Region, National Marine fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200).

Dated: August 13, 1991.

Nancy Foster,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–19286 Filed 8–13–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit: Elizabeth Mathews (P323A)

Correction

Notice was published on July 23, 1991 (56 FR 33744) that Elizabeth A. Mathews, University of Alaska Southeast, Department of Education, Liberal Arts and Science, 11120 Glacier Hwy., Juneau, AK 99801, applied for a Scientific Research Permit to take 700 humpback whales (*Megaptera novaeangliae*) as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

Correction: In addition to photo-identification studies and collection of sloughed skin after whales dive, the applicant also requests authorization (1) to export sloughed skin samples to Cambridge University, England, and (2) to opportunistically photograph up to 50 killer whales (*Orcinus orca*) annually for identification purposes. The Permit request is for a 5-year period.

Documents submitted in connection with the application are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Alaska Region, National Marine Fisheries Service, Fed. Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/568–7221);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196);

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (808/944–8831).

Dated: August 8, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–19287 Filed 8–13–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; NMFS Southwest Fisheries Science Center (P77 #50)

On June 13, 1991, notice was published in the **Federal Register** (56 FR 27246) that an application had been filed by the National Marine Fisheries Service, Southwest Region, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038, to take the following species over a 3-year period during photo-identification and aerial surveys: 1500 Bottlenose dolphin (*Tursiops truncatus*), 1500 Risso's dolphin (*Grampus griseus*), 100 Short-finned pilot whales, (*Globicephala macrorhynchus*), 5000 Common dolphin (*Delphhinus delphis*), 5000 Pacific white-sided dolphin (*Lagenorhynchus obliguidens*), 5000 Northern right-whale dolphin (*Lissodelphis borealis*), 100 Harbor porpoise (*Phocoena phocoena*) 100 Dall's porpoise (*Phocoenoides dalli*), 100 killer whales (*Orcinus orca*), 100 Baird's beaked whales (*Berardius*

bairdii), 100 Sperm whales (*Physeter macrocephalus*), 300 Humpback whales (*Megaptera novaeangliae*), 300 Blue whales (Balaenoptera musculus), 100 Fin Whales (*B. physalus*), 100 Minke whales (*B. acutorostrata*) 1000 gray whales (*Eschrichtius robustus*) and 6 North Pacific right whales (*Eubalaena glacialis*). Some of the individuals will be taken more than once. Opportunistic surveys will be conducted from various sites along the coast of mainland California. Data collected from the study will enhance existing research programs as well as provide detailed, supportive information for scheduled aerial surveys. Photographs will be added to existing catalogues created and maintained by the principal investigators studying particular species. Additionally, studies of photographically identified animals will be used to determine patterns of movement and association among individuals.

Notice is hereby given that on August 8, 1991 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 19732 (16 U.S.C. 1531–1543), the National Mariner Fisheries Service issued a Permit for the above the taking subject to certain conditions set forth therein.

Issuance of this permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

An Endangered Species Act section 7 consultation was conducted on the application and concluded that issuance of a Permit is not likely to jeopardize the continued existence of any endangered or threatened marine species or result in the destruction or adverse modification of critical habitat.

The Permit is available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Diector, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196);

Dated: August 8, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–19288 Filed 8–13–91; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards; Membership

AGENCY: Department of the Army, Defense.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310–0300.

SUMMARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Army Acquisition Executive Performance Review Board include:

1. Mr. Melvin E. Burcz, Program Executive Officer, Combat Support, Office of the Under Secretary of the Army.

2. Mr. Bennie H. Pinckley, PHD, Deputy Program Executive Officer, Air Defense, Office of the Under Secretary of the Army.

3. Mr. Neil W. Atkinson, Deputy Program Executive Officer, Communications Systems, Army Acquisition Executive, Program Executives.

4. Mr. Gary L. Smith, Deputy Program Executive, Aviation, Army Acquisition Executive, Program Executives.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91–19267 Filed 8–13–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environment Impact Statement (DEIS) for a Proposed Public Port (Department of the Army Permit Application Number AL91–00089–N) and General Navigation Facilities at Jackson, AL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers, intends to prepare a DEIS to evaluate the environmental impact of the construction of a Federal project for general navigation facilities to provide access for a public port at Jackson, Alabama; and the environmental impact of construction of non-Federal public port facilities by the City of Jackson, Alabama, as proposed under Department of the Army (DOA) Permit Application Number AL91–00089–N. The magnitude of the non-Federal facilities to provide a viable port at the proposed port site is sufficiently large to create possible significant impacts on adjacent wetlands. An Environmental Impact Statement (EIS) will be required to address these impacts before a permit can be issued. Because these impacts are directly attributable and integrally related to a Federal action (i.e., construction of the general navigation facilities to provide barge access to the port), the DEIS will be prepared to consider both the Federal project for general navigation facilities and the non-Federal port facilities project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Ms. Joanne Brandt, Attention: CESAM–PD–EI, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, Alabama 36628–0001; Telephone: (205)690–3260/ FTS 537–3260.

SUPPLEMENTARY INFORMATION: The Federal project general navigation facilities are being planned in accordance with provisions of section 106 of the Energy and Water Development Appropriations Act of 1987, Public Law 99–591. This act states that:

Within available funds, the Secretary of the Army acting through the Chief of Engineers is authorized and directed to modify the Black Warrior and Tombigbee Rivers, Alabama, project, to provide a safe channel and general navigation facilities in the vicinity of Jackson, Alabama * * * Development of general navigation facilities to provide a spur canal

for a port facility at Jackson, at an estimated cost of $2,300,000, shall be part of the Construction General program and shall be cost shared under terms and conditions acceptable to the Secretary of the Army as set forth in a binding agreement with a non-Federal sponsor desiring to participate in project construction.

The City of Jackson has agreed to serve as the non-Federal sponsor for the port facility.

Construction of the public port support facilities is subject to authorization by the Department of the Army under section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344). A Department of the Army permit application for construction of these facilities will be evaluated in accordance with the procedures specified in the Regulatory Programs of the Corps of Engineers (33 CFR 320–330); and the Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230).

1. Proposed Action

The City of Jackson, Alabama, and the Industrial Development Board of the City of Jackson, Alabama have submitted a permit application proposing an approximately 260-acre public port facility on the east bank of the Tombigbee River (Black Warrior-Tombigbee Waterway), just upstream of the Norfolk Southern Railroad bridge, in Clarke County, Alabama. Port facilities would provide for approximately 2,000 linear feet of berthing space for the primary user, to handle off-loading of wood products; and an additional 2,000 linear feet for two general purpose terminals, to include the handling of fuels and chemicals. The port site would be filled to above 100-year flood elevation, using dredged material obtained from excavation of the Federal project general navigation facilities and the non-Federal port slip and berth areas, with additional sand and gravel borrow material to be obtained and used as required. Facilities to be constructed on the fill site would include an access road, rail spur, open storage areas for whole logs, wood chips and coal, warehousing, and loading/unloading areas. Site development would impact approximately 160 acres of forested wetland habitat adjacent to the Tombigbee River.

2. Alternatives Being Evaluated

The following basic alternatives will be evaluated:

a. Various alternative site locations within the vicinity of the City of Jackson, Alabama, which may avoid or reduce impacts to forested wetland habitat will be evaluated.

b. Various alternative site configurations will be evaluated, in order to reduce impacts to forested wetland habitat and to enhance navigation safety. These may include spur canals, slips parallel to the river channel, or splitting of component parts of the port facility.

c. No action. This alternative represents the "without project" conditions against which impacts will be measured. This alternative also represents denial of the permit application submitted by the City of Jackson, Alabama.

3. Scoping Process

a. The scoping process will be conducted in accordance with procedures outlined by the Council on Environmental Quality in the November 29, 1978 **Federal Register**, National Environmental Policy Act-Regulations; and the Corps of Engineers, Department of the Army, Procedures for Implementing the National Environmental Policy Act (NEPA), as published in the February 3, 1988 **Federal Register**.

b. The scoping process will identify significant issues to be analyzed in depth in the DEIS. These issues will include, but not be limited to, impacts to wetland habitat, impacts to riverine habitat, concerns for navigation safety, the scope of the alternatives analysis and mitigation requirements.

c. The proposed actions and a scheduled scoping meeting are being advertised by public notice, issued jointly with the State of Alabama, and distributed to all known interested persons, in order to assist in developing facts on which a decision by the Corps of Engineers can be based. By public notice, the Corps of Engineers is soliciting comment and inviting participation in the scoping process by the public; Federal, State, and local agencies and officials; affected Indian tribes; and other interested parties. Comments will be used to assess properties, water quality, general environmental effects, and other public interest factors; and will assist in the alternatives analysis and preparation of the DEIS. Comments received during the scoping process will also assist in determination of the overall public interest of the proposed activities.

d. Coordination with the U.S. Fish and Wildlife Service and the Alabama Department of Conservation and Natural Resources, as required by the Fish and Wildlife Coordination Act and the Endangered Species Act, is being undertaken. Section 401 water quality certification will be requested from the Alabama Department of Environmental Management. Coordination required by other laws and regulations will also be conducted.

4. Scoping Meeting

A scoping meeting will be held on Monday, 16 September 1991, 7 p.m., at the Jackson City Hall, City Council Chambers, in Jackson, Alabama.

5. Availability of DEIS

It is estimated that the DEIS will be available for public review in August 1993.

Dated: August 6, 1991.

Dennis W. Heuer,

Major, Corps of Engineers, Deputy District Engineer.

[FR Doc. 91–19268 Filed 8–13–91; 8:45 am]

BILLING CODE 3701–CR–M

DEPARTMENT OF ENERGY

Cooperative Agreement

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy Field Office, Idaho announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 it intends to award a Cooperative Agreement to Battelle Columbus Laboratories (BCL). The objective of the work to be performed under this Cooperative Agreement is to demonstrate the usefulness and economics of an Electroaccustical Dewatering (EAD) prototype in application to corn fiber slurry.

FOR FURTHER INFORMATION CONTACT: Mary V. Willcox, U.S. Department of Energy, DOE Field Office—Idaho, 785 DOE Place MS 1129, Idaho Falls, Idaho 83402–1129, 208/526–2173.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is Pub. L. 93–577, the "Federal Non-nuclear Energy Research and Development Act of 1974" (ERDA). The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to demonstrate the EAD belt press prototype for enhanced conservation potential and economic benefits for corn wet milling, improve the efficiency of ultrasonic coupling and cake cooling, and disseminate the results of the program to promote extensive commercial adaptation of EAD by the food processing industry. The anticipated total project period to be

awarded is twelve (12) months. The total cost of the project is estimated at $275,000.00. The total project costs will be shared (73%/27%) $200,000.00 for DOE and $75,000.00 for BCL.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 91-19364 Filed 8-13-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF91-111-000, et al.]

Encogen Northwest, L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 7, 1991.

Take notice that the following filings have been made with the Commission:

1. Encogen Northwest, L.P.

[Docket No. QF91-111-000]

On July 30, 1991, Encogen Northwest, L.P., tendered for filing an amendment to its filing in this docket.

The amendment supplements certain aspects of facility's ownership structure, net electric power production capacity and construction schedule.

Comment date: September 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Montclair Cogeneration Project Associates Limited Partnership

[Docket No. QF91-182-000]

On July 22, 1991, Montclair Cogeneration Project Associates Limited Partnership tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining primarily to the ownership structure of Montclair Cogeneration Project Associates Limited Partnership.

Comment date: September 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Morgantown Energy Associates

[Docket No. QF89-25-000]

On August 2, 1991, Morgantown Energy Associates tendered for filing an amendment to their filing in this docket.

The amendment provides additional information relating to ownership of the facility.

Comment date: September 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER91-222-000]

Take notice that on July 31, 1991, Northern Indiana Public Service Company (Northern Indiana) tendered for filing an amendment to its original filing as initial rate schedules, Service Schedule L and Service Schedule M and tendered for filing an amendment to its Rate Schedules, the Ninth Supplemental Agreement to the Interconnection Agreement with the Wabash Valley Power Association, Inc. (Wabash Valley),

Service Schedule L—Provides for the Supply of Intermediate-Term Capacity and Energy Northern Indiana to Wabash Valley; Service Schedule M—Provides for the Unit Peaking Capacity and Energy Northern Indiana to Wabash Valley.

The proposed effective date of the service under Service Schedule L is January 1, 1990, the date from and after which Wabash Valley requested service thereunder. The proposed effective date of service under Service Schedule M is January 1, 1992.

Northern Indiana's filing requests waiver of Commission requirements as may be required to permit the proposed rate schedule filings to become effective pursuant to a mutual agreement of the two parties. Wabash Valley concurs in Northern Indiana's requests.

Copies of this filing have been served upon Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: August 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER91-561-000]

Take notice that Carolina Power & Light Company (CP&L) on July 31, 1991, tendered for filing changes outlined below in its agreements with Carteret-Craven Electric Membership (EMC), French Broad EMC, Jones-Onslow EMC, Lumbee River EMC, Randolph EMC, South River EMC, Wake EMC, and Tideland EMC.

1. *Tideland EMC-Bayboro 23 kV*—Cancellation of point of delivery and transfer of load to Grantsboro 230 kV point of delivery.

2. *Carteret-Craven EMC-Atlantic Beach 115kV*—Revision in metering voltage and location resulting in a reduction in monthly facilities charge.

3. *Randolph EMC-Ether 115 kV*—Installation of a new point of delivery including special metering facilities installed at customer's request to provide kWh and kQh meter pulse information. Customer will pay a monthly facilities charge under CP&L's additional facilities plan.

4. *South River EMC-Bentonville 115 kV*—Installation of a new point of delivery including special metering facilities installed at customer's request to provide kWh and kQh meter pulse information. Customer will pay a monthly facilities charge under CP&L's additional facilities plan.

5. *French Broad EMC-Micaville 115 kV*—Installation of a new point of delivery.

6. *Jones-Onslow EMC-Topsail 115 kV*—Increase in monthly facilities charge due to changes in metering that provides pulses to the customer.

7. *Wake EMC-Louisburg 115 kV*—Installation of a new point of delivery.

8. *Lumbee River EMC-Raeford 115 kV*—Addition of kQh meter pulses resulting in an increase in the customer's monthly facilities charge under CP&L's additional facilities plan.

The Company requests that the notice period be waived and these supplements be made effective coincident with the effective dates set forth on the notice of cancellation and the Exhibits A.

Comment date: August 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Electric Light and Power Company

[Docket No. ES91-47-000]

Take notice that on August 5, 1991, Iowa Electric Light and Power Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to not more than $100 million of First Mortgage Bonds and to guarantee $17 million Tax-Exempt Bonds over a two-year period and for exemption from the Commission's competitive bidding requirements.

Comment date: August 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. National Electric Associates Limited Partnership

[Docket No. ER90-168-005]

Take notice that on July 25, 1991, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding, 50 FERC ¶61,378 (1990). Copies of NEA's informational filing are on file with the Commission and available for public inspection.

8. Gulf States Utilities Company

[Docket No. ES91-44-000]

Take notice that on August 2, 1991, Gulf States Utilities Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $300 million of First Mortgage Bonds, in one or more series over a two-year period and for exemption from the Commission's competitive bidding requirements.

Comment date: August 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Electric Company

[Docket No. ER91-568-000]

Take notice that on August 2, 1991, Pennsylvania Electric Company (Penelec) filed an agreement for delivery from the New York-Pennsylvania State line to the Borough of Hooversville of the Borough's allocation of electric power and energy from the New York Authority's Niagara and St. Lawrence Projects. The delivery of electric power and energy will result in a net decrease in annual revenues to Penelec of $20,200.

Comment date: August 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf Power Company

[Docket No. EL90-40-002]

Take notice that on July 29, 1991, Gulf Power Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: August 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket Nos. ER89-582-000 and ER90-525-005]

Take notice that on August 1, 1991, New England Power Company (NEP) submitted for filing a Surcharge Compliance filing in the above-referenced dockets. NEP states that its filing reflects the reconciliation of estimates to actuals for certain specified costs and the recovery of the results of that reconciliation through a surcharge, pursuant to settlement agreements approved in these dockets.

NEP requests that the surcharge be made effective coincident with its next superseding Primary Service for Resale rate under its FERC Electric Tariff, Original Volume No. 1, which NEP also submitted for filing on this date, designated as Rate W-92.

Comment date: August 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19263 Filed 8-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-2206-000]

Tennessee Gas Pipeline Co.; Intent To Prepare an Environmental Assessment for the Electric Generation Transportation Project and Request for Comments on Its Scope

August 9, 1991.

Introduction

Tennessee Gas Pipeline Company (Tennessee) has filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to provide 71,610 cubic feet per day (Mcfd) of firm natural gas transportation services to four shippers in New York and Massachusetts and to construct and operate the facilities necessary to provide these services. These facilities would be an expansion of the pipeline projects approved by Federal Energy Regulatory Commission (FERC or Commission) for the transportation and delivery of Canadian natural gas to various customers in the New York and New England area. Tennessee would construct about 50.14 miles of pipeline loop in Pennsylvania, New York, and Massachusetts and 4,100 hp of additional compression at three existing compressor stations in New York and Massachusetts.

The previously approved pipeline projects included in the transportation of Canadian natural gas include the TEMCO and Niagara Import Point Projects (up to 141,110 Mcfd), and the Iroquois/Tennessee Phase I Pipeline Project (up to 162,795 Mcfd). An environmental assessment (EA) was issued by the FERC on the TEMCO Project in January 1990, and final environmental impact statements were issued in June 1990, for the Niagara Import Point and the Iroquois/Tennessee Phase I Pipeline Projects. The Commission issued orders approving the TEMCO Project on May 13, 1990, the Niagara Import Point Project on September 13, 1990, and the Iroquois/Tennessee Phase I Project on November 14, 1990.

The Iroquois/Tennessee Phase II Project is currently pending before the Commission in Docket Nos. CP90-639-000 and CP90-639-001. Under this project, Tennessee proposes to expand its system to transport up to 118,000 Mcfd on a firm basis for three customers.

Notice is hereby given that the FERC staff will prepare an environmental assessment (EA) on the facilities proposed in the above docket pertaining to the Electric Generation Transportation Project.

Proposed Facilities

Tennessee proposes to construct six segments of 30- and 36-inch diameter pipeline loops totalling 50.14 miles in Pennsylvania, New York, and Massachusetts. In addition, Tennessee proposes to add the following compression at three existing compressor stations: 1,000 horsepower (hp) at Station 230C and 2,100 hp at Station 245 in New York; and 1,000 hp at Station 264 in Massachusetts. The proposed facilities are identified on table 1 and located on figure 1.[1]

[1] The figure referred to in this notice is not being printed in the **Federal Register**, but has been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208-1371.

TABLE 1.—LOCATION OF PIPELINE FACILITIES AND COMPRESSOR STATION ADDITIONS FOR THE ELECTRIC GENERATION TRANSPORTATION PROJECT

Proposed facilities	Pipeline diameter (inches)	Pipeline length (miles)	Proposed horse-power	State	County
Pipeline					
Segment 1S	30	18.25		Pennsylvania.	Mercer, Crawford.
Segment 2S	30	9 59		New York	Chautauqua.
Segment 3S	36	7.22		New York	Ontario.
Segment 5S	36	4.00		New York	Herkimer, Otsego.
Segment 1X	36	6.00		New York	Albany.
Segment 2X	36	5.08		Massachusetts.	Berkshire.
Compressor Station Additions:					
Station 230C			1,000	New York	Niagara.
Station 245			2,100	New York	Herkimer.
Station 264			1,000	Massachusetts.	Worcester.

Several of the facilities proposed in the Electric Generation Transportation Project were analyzed in part in the Draft Environmental Impact Statement (DEIS) prepared for the Iroquois/Tennessee Phase I Pipeline Project under Docket No. CP89–629–000 issued in November 1989. The DEIS facilities were later dropped from the final EIS (FEIS) when the shipper withdrew its request for service. Of the proposed pipeline facilities, Segment 3S includes 7.22 miles of the DEIS' 18.18-mile Ontario/Seneca Loop, and Segment 5S includes 4.00 miles of the DEIS' 8.96-mile Herkimer/Otsego Loop. The DEIS and FEIS also included an analysis of the addition of 2,100 hp to existing Station 245. However, that compression addition was withdrawn by Tennessee prior to the issuance of the Commission's order. The analysis of these facilities will be included in the EA.

The DEIS did not include an analysis for Segments 1X, 1S, 2X, 2S nor for Compressor Stations 264 and 230C. The EA for the subject docket will incorporate applicable information from the DEIS and FEIS and provide a complete analysis of these proposed facilities.

Tennessee's proposed facilities would be used to transport 71,610 Mcfd of natural gas to interconnection points with Lockport Energy Associates (Lockport Energy) in Lockport, New York (28,000 Mcfd); Dartmouth Power Associates Limited Partnership (Dartmouth Power) in Mendon, Massachusetts (14,010 Mcfd); Pepperell Power Associates Limited Partnership (Pepperell Power) in Tewksbury, Massachusetts (9,600 Mcfd); and Boston Edison Company (Boston Edison) in Mendon, Massachusetts (20,000 Mcfd). Services for Lockport Energy, Dartmouth Power, and Pepperell Power are proposed to commence on November 1, 1993.

To meet scheduled delivery dates, Tennessee proposes to construct pipeline Segments 1S, 1X, and 2X, and compressor additions at Stations 230C and 245 during 1992. The remaining facilities (pipeline segments 2S, 3S, and 5S, and compressor additions at Station 264) would be constructed during 1993.

Construction Procedures

Tennessee proposes to use a 90-foot-wide construction right-of-way that would generally consist of 25 feet of existing right-of-way, 50 feet of new right-of-way, and 15 feet of temporary right-of-way. Additional work space beyond the pipeline right-of-way would be required at major road, railroad, and stream crossings. Compressor additions would be made within the fencelines of the existing compressor stations.

Construction of the pipeline is proposed to follow standard pipeline construction methods such as right-of-way clearing and grading, trenching, pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. Special construction techniques would be used at major road and railroad crossings (i.e., boring), in wetlands, and in residential areas. Tennessee proposes to implement erosion control and revegetation measures and to utilize special construction techniques for wetland and water crossings. These construction procedures and mitigation plans will be discussed further in the EA.

New pipeline segments would be hydrostatically tested prior to being placed in service according to Tennessee and U.S. Department of Transportation minimum safety standards and specifications. No chemicals would be used during testing. Tennessee would obtain appropriate Federal and state discharge permits prior to testing.

Current Environmental Issues

The EA will address the environmental concerns identified by the FERC staff, intervenors, and concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Cultural Resources
- —Effect of the project on properties listed or eligible for listing on the National Register of Historic Places.

Biological Resources
- —Impact of the project on threatened or endangered species.
- —Impact on wetlands and fisheries.
- —Habitat alteration.

Land Use
- —Impact of the project on residences, private land, and areas of special concern.
- —Impact of the project on public lands including State Game Land #270 and Maurice K. Goddard State Park in Pennsylvania, and Otis State Forest in Massachusetts.

Water Resources
- —Effect of construction on potable water supplies and cold-water fisheries.

Soils and Vegetation
- —Erosion control and revegetation.
- —Effect on crop production and farmland.

Alternatives
- —Alternative routes in residential and public land areas.

Comments are also solicited on any other topics of environmental concern from residents and others in the project area.

Comment Procedures

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties to this proceeding, and the public. Comments on the scope of the EA should be filed as soon as possible but no later than September 9, 1991. All written comments must reference Docket No. CP91–2206–000 and be addressed to:

Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20425.

A copy of the comments should also be sent to:

Mr. John Wisniewski, Environmental Project Manager, Federal Energy Regulatory Commission, room 7312–A, 825 North Capitol Street, NE., Washington, DC 20426.

Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Organizations and individuals receiving this "Notice of Intent to Prepare an Environmental Assessment" have been selected to ensure public awareness of the Electric Generation Transportation Project and public involvement in the review process under the National Environmental Policy Act. The EA will be sent automatically to addresses on the Federal Energy Regulatory Commission's official service list for this project, and to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, local agencies, and individuals who return the information request in the attachment to this document, preferably within 45 days of this notice.

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. John Wisniewski, telephone (202) 208–0972.

Lois D. Cashell,

Secretary.

Attachment

information Request

I wish to receive subsequent published information regarding the environmental analysis being conducted for the Electric Generation Transportation Project.

Name/Agency

Address

City

State

Zip Code

[FR Doc. 91–19262 Filed 8–13–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP91–2630–000, et al.]

Great Lakes Gas Transmission, et al., Limited Partnership; Natural Gas Certificate Filings

August 7, 1991.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91–2630–000]

Take notice that on July 31, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan, 48226, filed in Docket No. CP91–2630–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations and Great Lakes' blanket certificate issued in Docket No. CP90–2053–000 pursuant to section 7 of the Natural Gas Act for authorization to construct and operate a two new sales meter stations and taps to effectuate deliveries of natural gas to Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, (collectively, NSP), at Ashland, Wisconsin and Ironwood, Michigan, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that it proposes to transport up to 10,000 Mcf of gas per day through each of the meter stations under Rate Schedule FT of Great Lakes' FERC Gas Tariff Original Volume No. 3. Great Lakes also states that the natural gas delivered through the new sales points will be used within NSP's local distribution systems and at the time service commences through the meter stations, it will have sufficient capacity to accomplish the specified deliveries and the deliveries will have no significant impact upon its peak day and annual deliveries.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket Nos. CP91–2662–000, CP91–2663–000]

Take notice that on August 5, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Texas Gas and is summarized in the attached appendix.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2662-000 (8-5-91)	Rochester Gas and Electric Corporation.	12,858 12,858 4,693,170	Various	OH	6-10-91, FT, Firm	ST91-9627-000 7-1-91
CP91-2663-000 (8-5-91)	The Peoples Natural Gas Company.	20,483 20,483 7,476,295	Various	OH	6-10-91, FT, Firm	ST91-9628-000 7-1-91

3. Oryx Energy Company, et al.

[Docket No. CI62-1412-010, [2] et al.]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: August 26, 1991, in accordance with Standard Paragraph J at the end of the notice.

[2] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI62-1412-010 D 8-1-91	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 2-1-87 to South Timbers Limited Partnership.
CI62-1412-011 D 8-5-91	Oryx Energy Company	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 6-15-89 to Red Eagle Exploration Company.
CI63-1427-003 D 8-1-91	Oryx Energy Company	Arkla Energy Resources, a division of Arkla, Inc., Cooper North Field, Blaine County, Okahoma.	Assigned 10-1-89 to Headington Minerals, Inc.
CI68-846-001 D 8-1-91	Oryx Energy Company	Breckenridge Gasoline Company, Rodessa East Filed, Cass County, Texas.	Assigned 9-1-89 to Mark L. Shidler, Inc.
CI91-108-000 (G-13334) D 7-22-91	TEX/CON Oil & Gas Company 9401 Southwest Freeway, Suite 1200, Houston, TX 77074.	Panhandle Eastern Pipe Line Company, Light Field, Beaver County, Oklahoma.	Assigned 4-1-91 Oxy USA Inc. and Valence Operating Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205) of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19266 Filed 8-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2626-000, et al.]

Questar Pipeline Company, et al.; Natural Gas Certificate Filings

August 7, 1991.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Co.

[Docket No. CP91-2626-000]

Take notice that on July 31, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91-2626-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Grand Valley Gas Company (Grand Valley) at a new delivery point, under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that the pursuant to a transportation service agreement dated June 30, 1986, as amended, under its Rate Schedule T-2, it seeks authority to add the QPC to Clay Basin delivery

point and proposes to transport the equivalent of up to 12,420 MMBtu per day of natural gas for the account of Grand Valley, a marketer, from various receipt points on Questar's system to various delivery points located in Colorado, Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 8,000 MMBtu and 2,920,000 MMBtu, respectively, and that service commenced July 1, 1991, under the provisions of 18 CFR 284.223(a), as reported July 19, 1991, in Docket No. ST91–9622–000.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Co.

[Docket No. CP91–2625–000]

Take notice that on July 31, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91–2625–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Universal Resources Corporation d/b/a Questar Energy Company (Questar Energy) at new delivery points, under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that the pursuant to a transportation service agreement dated January 26, 1987, as amended, under its Rate Schedule T–2, it seeks authority to add the FMC Tap (East) and the QPC to Clay Basin delivery points and proposes to transport the equivalent of up to 301,968 MMBtu per day of natural gas for the account of Questar Energy, an affiliated marketer, from various receipt points on Questar's system to various delivery points located in Colorado, Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 80,000 MMBtu and 29,200,000 MMBtu, respectively, and that service commenced July 1, 1991, under the provisions of 18 CFR 284.223(a), as reported July 19, 1991, in Docket No. ST91–9623–000.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Questar Pipeline Co.

[Docket No. CP91–2624–000]

Take notice that on July 31, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91–2624–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Barrett Energy Company (Barrett) at new delivery point, under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that the pursuant to a transportation service agreement dated August 24, 1987, as amended, under its Rate Schedule T–2, it seeks authority to add the QPC to Clay Basin delivery points and proposes to transport the equivalent of up to 15,120 MMBtu per day of natural gas for Barrett, a producer, from various receipt points on Questar's system to various delivery points located in Colorado, Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 7,500 MMBtu and 2,737,500 MMBtu, respectively, and that service commenced July 1, 1991, under the provisions of 18 CFR 284.223(a), as reported July 19, 1991, in Docket No. ST91–9620–000.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Questar Pipeline Co.

[Docket No. CP91–2623–000]

Take notice that on July 31, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91–2623–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Exxon Corporation (Exxon) at a new delivery point, under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that the pursuant to a transportation service agreement dated February 24, 1989, as amended, under its Rate Schedule T–2, it seeks authority to add the QPC to Clay Basin delivery point and proposes to transport the equivalent of up to 124,200 MMBtu per day of natural gas for the account of Exxon, a producer, from various receipt points on Questar's system to various delivery points located in Colorado, Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 57,000 MMBtu and 20,805,000 MMBtu, respectively, and that service commenced July 1, 1991, under the provisions of 18 CFR 284.223(a), as reported July 19, 1991, in Docket No. ST91–9619–000.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Questar Pipeline Company

[Docket No. CP91–2622–000]

Take notice that on July 31, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91–2622–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Conoco, Inc. (Conoco) at a new delivery point, under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that the pursuant to a transportation service agreement dated February 29, 1988, as amended, under its Rate Schedule T–2, it seeks authority to add to QPC to Clay Basin delivery point and proposes to transport the equivalent of up to 27,000 MMBtu per day of natural gas for the account of Conoco, a producer, from various receipt points on Questar's system to various delivery points located in Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 25,000 MMBtu and 9,125,000 MMBtu, respectively, and that service commenced July 1, 1991, under the provisions of 18 CFR 284.223(a), as reported July 19, 1991, in Docket No. ST91–9621–000.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Algonquin Gas Transmission Company

[Docket No. CP91–2617–000]

Take notice that on July 30, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91–2617–000 a request pursuant to § 157.205 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate certain facilities in connection with establishing a new delivery point for Yankee Gas Services Company (Yankee), under its blanket certificate issued in Docket No. CP87–317–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin requests authorization to construct and operate facilities necessary to provide an additional point of delivery in Ledyard, Connecticut, for Yankee, an existing customer of Algonquin. It is stated that such facilities will include a new meter station located on property owned by the Mashantucket Pequot Indian Tribe, the ultimate end user, to serve their needs for a gas supply in Ledyard for space and water heating. It is stated that Algonquin's existing pipeline is adjacent to the meter station site and Yankee will install connecting facilities for the service to the Mashantucket Pequot Indian Reservation.

Algonquin states that it does not propose to increase the maximum daily delivery obligation under the current service agreements with Algonquin and Yankee. Algonquin further states that Yankee has requested a transfer of a portion of its entitlement for firm service, 560 MMBtu of natural gas per day, from an existing delivery point downstream to the proposed Ledyard delivery point. It is stated that Algonquin's peak day or annual commitments under firm service agreements, therefore, will not be affected by the construction of the proposed station.

Algonquin estimates the cost of the facilities to be $100,000. It is stated that Yankee will pay all costs associated with the project with the exception of the labor to perform the tap installation. It is further stated that the meter and tap station will be owned, operated and maintained by Algonquin; the remaining facilities owned and maintained by Yankee.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Company

[Docket No. CP91–2600–000]

Take notice that on July 26, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91–2600–000 an application pursuant to section 7(b) of the Natural Gas Act, as amended, for authority to abandon certain natural gas transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests permission and approval to abandon transportation services previously provided to Natural Gas Pipeline Company of America (Natural), Northern Indiana Public Service Company (NIPSCO), Panhandle Eastern Pipeline Company (Panhandle), Northern Natural Gas Company (Northern) and exchange services with Michigan Consolidated Gas Company (MichCon). ANR states that all of the transportation services for which it seeks abandonment are related to storage services provided by MichCon's Interstate Storage Division (ISD). Specifically, ANR requests (1) authorization to partially abandon all but 9,366 Mcf/d of transportation and exchange services for Natural under ANR's Rate Schedules X–57 and X–58, effective April 1, 1991; (2) abandonment of the remaining 9,366 Mcf/d of transportation and exchange services for Natural effective August 1, 1991 when Iowa-Illinois no longer requires the service; (3) abandonment of transportation service for NIPSCO under ANR's Rate Schedules X–49 and X–51, Northern under Rate Schedules X–53 and X–55 and Panhandle under ANR's Rate Schedule X–66; and (4) abandonment of the exchange service with MichCon under Rate Schedules X–50, X–52, X–54, X–56 and X–58. ANR requests that these abandonment, unless otherwise specified, be made effective retroactive back to April 1, 1991.

Comment date: August 27, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19274 Filed 8–13–91; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–2599–000, et al.]

Viking Gas Transmission Company, et al.; Natural Gas Certificate Filings

August 5, 1991

Take notice that the following filings have been made with the Commission:

1. Viking Gas Transmission Company

[Docket No. CP91–2599–000]

Take notice that on July 26, 1991, Viking Gas Transmission Company

(Viking), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP91–2599–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to add a new delivery point for firm and interruptible transportation services that Viking currently provides for Northern States Power Company (NSP), under its blanket certificate issued in Docket No. CP82–414–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Viking states that the new delivery point will be located in Colfax, Wisconsin and that NSP has agreed to reimburse Viking for the $230,000 estimated cost of the necessary facilities, which consist of a hot tap, measurement, and data acquisition equipment.

In addition, Viking states that the peak and annual quantities would be 117,300 dth, and 42,814,500 dth, respectively. Viking further states the total quantities to be delivered by Viking to NSP after establishment of the new delivery point would not exceed presently authorized quantities. Viking asserts that it has sufficient capacity in its system to accomplish delivery of gas to the proposed Colfax delivery point without detriment or disadvantage to any of Viking's other customers.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket Nos. CP91–2633–000, CP91–2634–000, CP91–2635–000]

Take notice that Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Recepit points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP1-2633-000 8-1-91)	VESGAS Company (Intrastate Pipeline Company).	2,000, 1,000, 365,000	TX, OK, KS, CO, WY	CO	5-1-91, TI-1, Interruptible.	ST91-8882 5-1-91
CP1-2634-000 8-1-91)	Louis Dreyfus Energy Corp. (marketer).	15,000, 5,000, 1,825,000	TX, OK, KS, CO, WY	OK	4-1-91, TI-1, Interruptible.	ST91-8881 5-1-91
CP1-2635-000 8-1-91)	Presidio Gas Resources, Inc. (marketer).	10,000, 2,000, 730,000	TX, OK, KS, CO, WY	WY	6-1-91, TI-1, Producer.	ST91-9392 6-1-91

3. Northern Border Pipeline Company

[Docket No. CP91–2598–000

Take notice that on July 26, 1991, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP91–2598–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to operate an existing valve setting as a new delivery point to Northern Natural Gas Company (Northern) in Lincoln County, Minnesota, under its blanket certificate granted in Docket No. CP84–420–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that the natural gas volumes delivered to Northern at the proposed delivery point are Northern's system supply volumes currently being transported by Northern Border under terms and conditions of a long-term firm contract between the parties and pursuant to Northern Border's Order 436/500 blanket authorization. Further, the natural gas volumes received by Northern at the proposed delivery point would be redelivered and sold to Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (Peoples) to serve the towns of Ivanhoe, Canby and Hendricks, Minnesota.

Northern Border would deliver to Northern up to 1,791 Mcf on a peak day and an estimated 206,634 Mcf annually. Northern Border would install communication equipment pursuant to § 2.55(a) of the Commission's Regulations and Northern would install the measurement facilities and regulation at the point of interconnection.

Northern Border further states that the total quantities of natural gas to be delivered to Northern would not exceed presently authorized quantities and the change is not prohibited by Northern Border's existing tariff. Northern Border asserts that it has sufficient capacity in its system to accomplish delivery of gas to the proposed delivery point without detriment or disadvantage to any other customer.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company and Midwestern Gas Transmission Company

[Docket Nos. CP91–2636–000, CP91–2637–000, CP91–2638–000, CP91–2641–000]

Take notice that on August 1, 1991, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, and Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP87–115–000, and Docket No. 90–174–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set

forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual Dth	Receipt points [1]	Delivery points	Contract date rate schedule, service type	Related docket, start up date
CP91-2636-000 (8-1-91)	Williams Gas Marketing Company (Intrastate Pipeline).	100,000 100,000 36,500,000	OLA, LA	TN	6-19-91, [2]IT, Interruptible.	ST91-9716-000 7-4-91
CP91-2637-000 (8-1-91)	NGC Transportation, Inc. (marketer).	[3] 600,000 600,000 219,000,000	Various	Various	2-29-88, [2] IT, Interruptible.	ST91-9522-000, 7-1-91
CP91-2638-000 (8-1-91)	Associated Natural Gas, Inc., (marketer).	[4] 90,000 90,000 32,850,000	LA, TX, AL	Various	11-13-89, [2] IT, Interruptible.	ST91-9509-000 7-1-91
CP91-2641-000 (8-1-91)	Energy Marketing Exchange, Inc. (marketer).	75,000 75,000 27,375,000	TN, IL, IN, KY	TN, IL, IN, KY	7-2-91, IT, Interruptible.	ST91-9672-000 7-4-91

[1] Offshore Louisiana is shown as OLA.
[2] As amended.
[3] Tennessee states that this quantity includes 100,000 dekatherms previously authorized.
[4] Tennessee states that this quantity includes 50,000 dekatherms previously authorized.

5. Great Lakes Gas Transmission Limited Partnership

[Docket Nos. CP91-2627-000, CP91-2628-000]

Take notice that Great Lakes Gas Transmission Limited Partnership, suite 1600, One Woodward Avenue, Detroit, Michigan 48226, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-2198-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2627-000 (7-31-91)	Northridge Petroleum Marketing, Inc. (marketer).	100,000 100,000 36,500,000	MI, MN	MI	11-1-90, IT, Interruptible.	ST91-9380-000 6-1-91
CP91-2628-000 (7-31-91)	CanadianOxy Marketing Inc. (producer).	50,000 50,000 18,250,000	MI, MN	MI, MN	10-31-90, IT, Interruptible.	ST91-9379-000 6-1-91

6. Mississippi River Transmission Corporation

[Docket No. CP91-2642-000]

Take notice that on August 1, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-2642-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional point of delivery for an existing customer Shell Oil Company (Shell), under the authorization issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT states that it currently provides both sales and transportation service to Shell through an existing delivery point at Shell's Wood River, Illinois manufacturing Plant. It is stated that Shell is a direct, industrial customer of MRT. MRT avers that it provides interruptible sales service to Shell up to a maximum daily quantity of 90,000 MMBtu, pursuant to a gas sales contract effective March 1, 1990. It is stated that MRT also provides Shell firm transportation service up to a maximum daily quantity of 10,000 MMBtu, pursuant to a transportation service agreement which took effect on June 1, 1991.[4] MRT states that it provides Shell interruptible transportation service up to a maximum daily quantity of 52,500 MMBtu, pursuant to a transportation service agreement which took effect on January 1, 1990.[5]

[4] MRT states that it filed its prior notice of this transaction in Docket No. CP91-2564-000.
[5] MRT states that it filed its prior notice of this transaction in Docket No. CP91-821-000.

MRT requests authority to install an additional tap at Wood River, Illinois to provide sales and transportation service to Shell's Marine Vapor Control System, which is currently under construction. According to MRT, Shell will use the gas delivered at the proposed delivery point for the recovery of hydrocarbon vapors at its Wood River Oil Products Terminal. MRT estimates that it would deliver 140 MMBtu of natural gas on a peak day and 50,000 MMBtu of natural gas on an annual basis at this delivery point. It is submitted that the addition of this delivery point will not result in an increase in the total daily or annual quantities MRT is authorized to deliver to Shell pursuant to the existing sales and transportation contracts and MRT's existing certificate authority.

MRT proposes to install a 2-inch tap on its Alton Line and 150 feet of 2-inch pipe to a new meter and regulator station to be constructed. It is stated that the facilities will be located on MRT's existing right-of-way, and right-of-way to be acquired by MRT, in Section 33, T5N–R9W, Madison County, Illinois. MRT states that the installed cost of these facilities is estimated to be $70,000, and that Shell will reimburse MRT for all costs associated with these facilities, including the fee for this filing.

MRT further states that the proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the deliveries proposed without determent or disadvantage to its other customers.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP91–2609–000]

Take notice that on July 30, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91–2609–000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point for service to Public Service Company of Colorado (PSCo), an existing sales customer of CIG, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public insection.

CIG states that it proposes to add the Comanche delivery point, located in Pueblo County, Colorado, to its service agreement with PSCo. It is indicated that the delivery point is an existing section 311 transportation delivery point for PSCo. CIG states that no facilities are proposed in this filing. CIG further states that no change in PSCo's total daily entitlement is proposed by this request. CIG indicates that it believes that it would experience no significant impact on its peak day or annual sales resulting from the addition of the proposed delivery point and the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing transmission system without detriment or disadvantage to CIG's other customers.

Comment date: September 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19264 Filed 8–13–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–225–005]

Chicago Energy Exchange of Chicago, Inc.; Informational Filing

August 7, 1991.

Take notice that on July 29, 1991 Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by Ordering Paragraph (L) of the Commission's August 8, 1989 order in this proceeding. 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19271 Filed 8–13–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–401–008]

Citizens Power & Light Corporation; Informational Filing

August 7, 1991.

Take notice that on July 31, 1991, Citizens Power & Light Corporation (Citizens) filed certain information as required by Ordering Paragraph (M) of the Commission's August 8, 1989 order in this proceeding. 48 FERC ¶ 61,210 (1989). Copies of Citizen's information filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19270 Filed 8–13–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–1721–000]

Southern Natural Gas Co.; Filing of Stipulation and Agreement and Establish of Comment Dates

August 7, 1991.

Take notice that on July 30, 1991, Southern Natural Gas Company (Southern) tendered for filing in the above-captioned proceeding a Stipulation and Agreement which, if approved by the Commission, would resolve or provide for the resolution of all of the issues in the above-referenced proceeding.

Southern has requested and notice is hereby given that initial comments on the Stipulation are due by October 4, 1991, and reply comments by October 21, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19265 Filed 8–13–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3984–1]

Public Hearings Relating to the Integrated Environmental Plan for the Mexico-U.S. Border Area

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of public hearings relating to the Integrated Environmental Plan for the Mexico-U.S. Border Area.

SUMMARY: On November 27, 1990, in Monterrey, Mexico, President Bush and Mexican President Carlos Salinas de Gortari instructed the environmental agencies of both countries to design an integrated plan to periodically examine mechanisms for reinforcing bilateral cooperation to solve the environmental problems of the border area. It was the intent of both Presidents that the Integrated Environmental Plan for the Border Area (the Border Plan) involve the participation of the relevant governments, business and academic institutions, and environmental organizations. The public is given the opportunity to make written comments and to participate in open hearings on the Border Plan.

HEARING DATES: September 16–26, 1991. (For dates of specific hearings, see supplementary information.)

COMMENT DATES: Persons wishing to testify orally at the hearings must provide written notification and copies of testimony by Friday, August 30, 1991. All other written comments must be received by Monday, September 30, 1991. (See supplementary information for additional details.)

CONTACT ADDRESSES: For answers to procedural questions concerning public comments and/or public hearings, the public is requested to contact: Orlando Gonzalez, U.S. Environmental Protection Agency (A–106), Office of International Activities, 401 M Street, SW., Washington, DC 20460, Telephone (202) 382–2170.

All other questions concerning the Border Plan should be directed to: Richard Kiy, U.S. Environmental Protection Agency (A–106), Special Assistant for the Border Plan, Office of International Activities, 401 M Street, SW., Washington, DC 20460, Telephone (202) 382–7791.

SUPPLEMENTARY INFORMATION:

1. Background

Over the years the United States and Mexico have engaged in a wide range of activities to promote border cooperation on many issues, including pollution control. In 1983, with the signing of the 1983 U.S./Mexico Border Environmental Agreement, a systematic approach to the broad spectrum of environmental problems in the border area was undertaken. This Agreement pledges cooperation to prevent, reduce, and eliminate sources of pollution which affect air, water, and land within the border area, defined in the Agreement as extending 100 kilometers (62 miles) on each side of the international boundary. The Agreement gives EPA and the Mexican Secretariat of Urban Development and Ecology (SEDUE) the lead role to implement solutions.

On November 27, 1990, in Monterrey, Mexico, president Bush and President Carlos Salinas de Gortari of Mexico instructed the environmental agencies of both countries (EPA and SEDUE) to design a comprehensive plan to deal with the environmental problems of the border area. The Presidents stated that the Border Plan should be based on the 1983 Agreement. In response to the Presidential initiative, U.S. and Mexican officials have been meeting since December 1990 to develop a draft Border Plan that would be comprehensive and would promote the goal of solving pollution problems in the border area. A draft of the Border Plan was made available to the public on August 1, 1991. Those persons desiring copies of the Border Plan should contact Orlando Gonzalez, Office of International Activities, Mail code A–106, USEPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 382–2170.

2. Public Hearings

The U.S. Environmental Protection Agency, in order to facilitate the public presentation of oral testimony regarding the Border Plan, will hold hearings on the Plan and related issues along the U.S./Mexico border. The dates and locations of the hearings are as follows:

City	Date	Time	Location
McAllen, TX.	9/16	9 a.m.–Noon.....	McAllen City Hall, City Council Chambers, 311 N. 15th Street.
Harlingen, TX.	9/17	2 p.m.–6 p.m.	Texas State Technical College (TSTC), 2424 Boxwood.
Laredo, TX.	9/18	10 a.m.–1 p.m.	Laredo City Hall, City Council Chambers, 1110 Houston Street.
Sunland Park, NM.	9/20	9 a.m.–Noon.....	Santa Teresa, Country Club.
El Paso, TX.	9/20	3 p.m.–8 p.m.	Univ. of Texas, El Paso, Thomas Rivera Room, Student Union.
San Diego, CA.	9/23	9 a.m.–2 p.m.	U.S. Federal Building, room 4F–13, 880 Front Street (Downtown San Diego).
Calexico, CA.	9/24	10 a.m.–4 p.m.	Calexico City Library, 850 Encinas Avenue.
Nogales, AZ.	9/26	9 a.m.–1 p.m.	Nogales City Hall, City Council Chambers, 777 North Grand.

Persons wishing to testify orally at the hearings must provide written notification of their intention by Friday, August 30, 1991, to Orlando Gonzalez, Office of International Activities, Mail Code A–106, USEPA, 401 M Street, SW., Washington, DC 20460. The notification should include: (1) The specific hearing to be attended; (2) the name of the person presenting the testimony, their address and telephone number; and (3) a brief summary of their presentation, including a list of those subjects to be discussed.

Those persons wishing to present oral testimony at a hearing should also submit twenty typed copies of their statements to Orlando Gonzalez at the above address by Noon, Friday, August 30, 1991. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions. Participants should provide thirty typed copies of their oral statement at the time of the hearings.

Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

3. Written Comments

Those persons not wishing or not able to participate in the hearings may submit written comments (twenty typed copies) no later than Monday, September 30, 1991 to Orlando Gonzalez at the above address. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, room 2904 Waterside Mall, from 9 a.m. to 4 p.m., Monday through

Friday. For further information, the public is requested to contact Orlando Gonzales, Office of International Activities, Mail Code A–106, USEPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 382–2170.

Richard Kiy,

Special Assistant for the Border Plan, Office of International Activities, U.S. EPA.

[FR Doc. 91–19348 Filed 8–13–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–60022; FRL–3939–2]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The Notices were issued following issuance of Data Call-In Notices by the Agency and the failure of registrants subject to the Data Call-In Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take

part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Agway, Inc.	8590-432	Thiram	Thiram 65W	7/11/91
	8590-566	Thiram	Agway Thiram 75WP Fruit, Vegetable and Turf Fungicide	7/11/91
Micro-Flo Company	51036-53	Thiram	Thiram 75WP	7/11/91
	51036-65	Thiram	Thiram 65WP	7/11/91
Agrolinz, Inc.	42545-33	2,4-D	Visko-Rhap Oil Soluble Amine A-30	8/2/91

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference	Original Due-Date
Thiram	Agway, Inc.	30-Day Response		10/5/90
Thiram	Micro-Flo Company	30-Day Response		10/5/90
2,4-D	Agrolinz, Inc.	Description of Beginning Materials	61-2	3/1/89
		Discussion of Formation of Impurities	61-3	3/1/89
		Preliminary Analysis	62-1	3/1/89
		Color	63-2	3/1/89
		Physical State	63-3	3/1/89
		Odor	63-4	3/1/89
		Melting Point	63-5	3/1/89
		Boiling Point	63-6	3/1/89
		Density, Bulk Density, Specific Gravity	63-7	3/1/89
		Solubility	63-8	3/1/89
		Vapor Pressure	63-9	3/1/89
		Dissociation Constant	63-10	3/1/89
		Octanol/Water Partition Coefficient	63-11	3/1/89
		pH	63-12	3/1/89
		Stability	63-13	3/1/89
		Acute Avian Oral Toxicity	71-1	6/1/89
		Avian Subacute Dietary, Quail and Duck	71-2	6/1/89
		Freshwater Fish Toxicity - TGAI Warmwater	72-1a	6/1/89
		Freshwater Fish Toxicity - TGAI Coldwater	72-1b	6/1/89
		Freshwater Fish Toxicity - TEP Warmwater	72-1c	6/1/89
		Freshwater Fish Toxicity - TEP Coldwater	72-1d	6/1/89
		Acute Toxicity to Freshwater Invertebrates - TGAI	72-2a	6/1/89
		Acute Toxicity to Estuarine and Marine Organisms	72-3	9/1/89
		Fish Early Lifestage and Aquatic Invertebrates	72-4	9/1/89
		Aquatic Organism Accumulation	72-6	9/1/89
		Acute Oral Toxicity - Rat	81-1	6/1/89
		Acute Dermal Toxicity - Rabbit	81-2	6/1/89
		Acute Inhalation Toxicity - Rat	81-3	6/1/89
		Eye Irritation - Rabbit	81-4	6/1/89
		Dermal Irritation - Rabbit	81-5	6/1/89
		Dermal Sensitization - Guinea Pig	81-6	6/1/89
		90-day Feeding - Rodent	82-1a	12/1/89
		90-day Feeding - Non-rodent	82-1b	3/1/90
		21-day Dermal	82-2	9/1/89
		Teratogenicity - Rat	83-3a	12/1/89
		Teratogenicity - Rabbit	83-3b	12/1/89
		Gene Mutation	84-2a	6/1/89
		Structural Chromosomal Aberration	84-2b	9/1/89
		Other Mechanisms of Mutagenicity	84-4	9/1/89
		General Metabolism	85-1	9/1/90
		Neurotoxicity (dermal)	81-X	9/1/89
		Seed Germination/Seedling Emergence	123-1a	6/1/89
		Vegetative Vigor	123-1b	6/1/89
		Aquatic Plant Growth	123-2	6/1/89
		Hydrolysis	161-1	6/1/89
		Photodegradation in Water	161-2	6/1/89
		Photodegradation on Soil	161-3	6/1/89
		Photodegradation in Air	161-4	6/1/89
		Aerobic Soil Metabolism	162-1	3/1/91
		Anaerobic Soil Metabolism	162-2	3/1/91
		Anaerobic Aquatic Metabolism	162-3	3/1/91
		Leaching and Adsorportion/Desorption	163-1	9/1/89
		Volatility (Lab)	163-2	9/1/89
		Volatility (Field)	163-3	12/1/89
		Soil Dissipation	164-1	3/1/91
		Aquatic Dissipation	164-2	3/1/91
		Forestry	164-3	3/1/91
		Accumulation in Fish	164-4	9/1/89
		Accumulation in Aquatic Nontarget Organisms	165-5	9/1/89

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Thiram

In June 1984, EPA issued a Registration Standard which included a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing thiram used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Thiram Registration Standard required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. The Thiram Registration Standard was initially issued to registrants of

manufacturing use and technical products. Subsequently, the Thiram Task Force, the technical source consortium, informed the Agency of their intent to support only registered seed treatment and non–food uses of thiram. The Task Force informed the Agency that it would not be developing residue data in support of foliar, soil, or root dip applications of thiram on any food crop. As such, the only food use remaining on thiram labels which is currently supported is seed treatments. As a result of the Thiram Task Force's decision, the responsibility for generating the necessary data to maintain the deleted uses shifted to the remaining end–use registrants.

Accordingly, in a letter dated August 27, 1990, the Agency informed you and other end–use registrants of thiram products of the above status, imposed upon you and the other registrants the Thiram Registration Standard data requirements, and required that you inform the Agency within 30 days of your receipt of the letter of the steps you were electing to take regarding the data requirements necessary to support your registration. To date, almost a year has passed since the time you received the Agency letter and the Agency has received no response from you. Because the Agency has not received a response from you as a thiram registrant electing either to undertake the required testing or any other appropriate response (i.e. delete subject uses by amending registration and submitting revised labeling), the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. 2,4-D

In September 1988, EPA issued a Registration Standard which included a Data Call–In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing 2,4-D used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The 2,4-D Registration Standard dated September 1988 required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you dated February 16, 1989 in which you as a 2,4-D registrant committed to undertake the required testing pertaining to the product which you obtained after a transfer of registration. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: August 7, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91–19349 Filed 8–13–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the Performance Review Board.

DATES: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Theresa J. Jackson, Director of Personnel and EEO, Federal Labor Relations Authority (FLRA), 500 C St., SW., Washington, DC 20424–0001, (202) 382–0751.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board: Solly Thomas, Office of the Executive Director, FLRA; Brenda M. Robinson, Office of General Counsel, FLRA; Peter J. Basso, Federal Highway Administration; Shirley Bednarz, National Labor Relations Board; Thomas Lanphear, Merit Systems Protection Board.

Theresa J. Jackson,

Director of Personnel and EEO.

[FR Doc. 91–19276 Filed 8–13–91; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL MARITIME COMMISSION

Port of Palm Beach District Gulfstream Line Inc., 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 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of **Federal Regulations.** Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010876–005.

Title: Port of Palm Beach District/ Gulfstream Line Inc. Terminal Agreement.

Parties: Port of Palm Beach District (Port) Gulfstream Line Inc. (GLT).

Synopsis: The Agreement, filed August 26, 1991, restates and amends the basic lease agreement to eliminate the required minimum annual wharfage guarantee in exchange for GLI's release of Parcel "H" to the Port.

By Order of the Federal Maritime Commission.

Dated: August 8, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–19248 Filed 8–13–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for

Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Maritz Inc. and Maritz Travel Company, 1375 North Highway Drive, Fenton, Saint Louis County, MO 63099–0800.

Vessel: Ecstasy.

Dated: August 8, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–19249 Filed 8–13–91; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P4–91]

Application for Section 35 Exemption—Puget Sound Tug & Barge Co.; Notice of Filing

Notice is given that Puget Sound Tug & Barge Co. ("Puget"), d/b/a Hawaiian Marine Lines and Pacific Alaska Line, has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Specifically, Puget seeks exemptions from the 30 day notice requirement of section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, in the trade between the mainland United States (including Alaska) and Hawaii and in the trade between Alaska and the other United States, to allow publication on one day's notice of all commodity rate reductions and all changes in existing carrier rules, regulations or notes which reduce the shipper's cost of transportation. In addition, Puget requests that such exemptions extend to all new carrier rules, regulations or tariff notices which would reduce the shipper's cost of transportation, and all changes in tariff wording that result in no change in transportation cost to the shipper.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are required to submit views or arguments on the application no later than September 12, 1991. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 in an original and 15 copies. Responses shall also be served on William H. Fort, Esq., Fort & Schlefer, 1401 New York Avenue, NW., suite 1200, Washington, DC 20005.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 91–19259 Filed 8–13–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Commercial BancShares, Incorporated, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 3, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Commercial BancShares, Incorporated, Parkersburg, West Virginia; to acquire 100 percent of the voting shares of The Dime Bank, Marietta, Ohio.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp., Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Farmers State Bank, Pound, Wisconsin.

Board of Governors of the Federal Reserve System, August 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19297 Filed 8-13-91; 8:45 am]

BILLING CODE 6210-01-F

Montfort Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Montfort Bancorporation, Inc., Platteville, Wisconsin, and its wholly owned subsidiary Clare Bancorporation,

Inc., Platteville, Wisconsin; to acquire First Federal Savings and Loan Association of Platteville, Platteville, Wisconsin, and thereby engage in acquiring a thrift pursuant to § 225.25(b)(9) of the Board's Regulation Y. The thrift will be converted to a national banking association and subsequently merged with Clare Bank, National Association, Platteville, Wisconsin, in an Oakar transaction.

Board of Governors of the Federal Reserve System, August 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 91-19298 Filed 8-13-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism for September 1991.

The Council will be performing review of applications for Federal assistance, therefore, a portion of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6), 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of the committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C-20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-4375).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Meeting Date: September 19-20, 1991.

Place: Wilson Hall, 3rd Floor, Building #1, NIH Campus, Bethesda, Maryland.

Open: September 19, 10:15 a.m.-5 p.m;

Closed: September 20, 9 a.m.-adjournment.

Contact: Mr. James F. Vaughan, room 16C-20, Parklawn Building, Telephone (301) 443-4375.

* * * * *

Dated: August 7, 1991.

Peggy W. Cockrill,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-19299 Filed 8-13-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Announcement Number 149]

Availability of funds for Fiscal Year 1991 for Cooperative Agreements To Support Adult, Adolescent and Pediatric Human Immunodeficiency Virus (HIV) Infection Reporting Program

Introduction

The Centers for Disease Control (CDC) announces a program for competitive applications to supplement Announcement Number 103, FY 1991 HIV/AIDS Surveillance Cooperative Agreements under two components. Component A will provide support and technical assistance for standardization of HIV infection reporting in adults and adolescents in States with mandated HIV reporting by name in effect by July 1, 1991. Component B will provide support and technical assistance for the development and implementation of a national, uniform surveillance system for pediatric HIV infection.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV infection. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

These cooperative agreements authorized under sections 301(a) (42 U.S.C. 241(a)) and 311 (42 U.S.C. 243) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are official State and local health agencies that are current recipients of HIV/AIDS Surveillance cooperative agreements. Applicants that are eligible to apply for Component A must have mandated HIV infection reporting by name or other unique identifier in effect by July 1, 1991. Applicants that meet the following minimum criteria are encouraged to apply for funding under Component B: State law or regulation does not prohibit the health department from accepting reports by name or unique identifier on HIV-infected children less than 13 years of age, and one or more of the following minimum criteria are met:

(a) 15 or more cumulative pediatric AIDS cases were reported to CDC by December 31, 1990;

or

(b) Seroprevalence greater than or equal to 0.5 per 1,000 childbearing women during the most recent 12-month period for which survey data are available (applicants must specify the rate and time period in their application);

or

(c) Estimated number of HIV-infected women giving birth exceeded 50 during the most recent annual survey period. In areas where the survey is not on-going year-round, the estimation can be obtained in the following manner: Number of HIV+ women giving birth × (12/length of survey period in months) (applicants must specify how the estimates were derived in their application).

(Note to applicants that are current recipients of HIV/AIDS Surveillance Cooperative Agreements: Applicants may apply for either component A only, B only, or both A and B. Applicants funded for component A, but not eligible for component B, will be provided technical assistance from CDC to carry out activities under component B as part of a national pediatric HIV infection surveillance system.)

Availability of Funds

Approximately $1,800,000 will be available for Component A and $1,400,000 for Component B in Fiscal year 1991 to provide supplemental funding of 19 to 30 existing HIV/AIDS surveillance cooperative agreements. Awards are expected to range from $20,000 to $150,000. Since these will be supplemental awards to the existing HIV/AIDS Surveillance Cooperative Agreements, the budget period will begin on the date of the award and end on December 31, 1991. Therefore, the second budget period within this project period will being January 1, 1992, and will terminate December 31, 1992. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and on the availability of funds.

Purpose

The purpose of this program is to assist State and local health agencies in the development, implementation and maintenance of: (a) A standardized active surveillance system for reporting HIV infection in adults and adolescents

in states that mandate HIV infection reporting by name; and (b) a national, uniform surveillance system for pediatric HIV infection. Standardized active reporting of HIV infection will provide more accurate guidance for prevention activities, referral for available services, and resource allocation planning on a State, local and national level.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Design, implement, and maintain a standardized active surveillance program for HIV infection and associated morbidity and mortality, including but not limited to CD4+ cell counts.

2. Conduct associated investigations and identify populations at risk and risk factors in accordance with CDC guidelines and recommendations.

3. Special emphasis should be placed on disseminating surveillance information to those at the local level responsible for prevention, health-care planning and service delivery in order to increase support for local prevention efforts, identify patterns of infection, formulate and target prevention strategies, and project health care requirements and costs.

4. Specific required surveillance activities:

a. Design and conduct active surveillance activities directed at improving the reporting of confirmed positive HIV–1 antibody tests conducted in facilities in the public health agency's geographic jurisdiction.

b. Establish liaisons with primary care providers, such as hospitals and clinics, selected physicians (e.g., infectious disease subspecialists), and tuberculosis (TB) clinics; laboratories (e.g., laboratories offering CD4+ cell testing), drug registries (e.g., Zidovudine (AZT)), death certificate registries; HIV counseling and testing sites and other public health agencies to enhance identification and reporting of cases. Provide periodic feedback of summary data to reporting sources.

c. Develop and maintain a secure central registry of all reported cases which includes epidemiologic, laboratory (e.g., HIV serologies and CD4+ cell counts), and clinical information for individual cases, source of report (e.g., hospital outpatient clinics), and which permits rapid, uniform updates and retrieval of information for regular and special tabulations and analysis of data. The case registry must be of limited access and have procedures to insure confidentiality of patient records and all personal identifiers.

d. Report all confirmed HIV–1 antibody tests meeting the joint CDC and Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) definition of HIV–1 seropositivity ("Interpretation and use of the western blot assay for serodiagnosis of human immunodeficiency virus type 1 infections," Morbidity and Mortality Weekly Report 1989 Jul 21; 38(S–7)) to CDC at least monthly, and without patient names. Update reports periodically to determine vital status and when individuals with HIV infection have met the CDC definition for AIDS. Reports and updates will be made using CDC developed software.

e. Encourage reporting sources to report accurate mode of transmission information. Follow-up to determine if more current risk factor or medical status information is available.

f. Analyze, present, and publish the results of surveillance activities and epidemiologic investigations in consultation with CDC.

g. Focus and/or redirect surveillance activities as indicated through data analyses and evaluation activities.

h. Promptly report all known AIDS cases to those responsible for AIDS surveillance and coordinate all HIV surveillance with AIDS surveillance staff.

i. Evaluate the effect of active HIV surveillance on prevention activities and AIDS case reporting.

Those applicants applying for component B alone are expected to complete the above activities only in children under 13 years of age. Additionally, all applicants applying for component B are expected to:

1. Assist in establishing referrals to primary health care services, to social support services, and to physicians or tertiary care centers which can provide state-of-the-art therapies for individuals identified through the surveillance system.

2. Evaluate the effectiveness of pediatric HIV reporting in enhancing access to care, treatment, and support services for the infected child and his or her family.

B. CDC Activities

1. Provide consultation and scientific and technical assistance in planning, implementing, analyzing, and evaluating surveillance activities.

2. Provide training in surveillance, program planning and management, and coordination with community resources.

3. Develop, refine, and disseminate HIV/AIDS surveillance program information which describes effective methods to carry out program activities and monitor progress.

4. Provide criteria for the standardization of laboratory reports, case report forms, and assistance in establishing and maintaining the computerized HIV Infection Reporting System (HRS).

5. Participate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all states and communities.

Evaluation Criteria

Eligible applications submitted under this announcement will be evaluated according to the following criteria:

1. The quality of plans to develop, implement and evaluate a standardized active surveillance program for HIV infections, describing how potential sources of data will be identified, accessed, and used, including a plan to protect the confidentiality of all personal identifying information collected on the local level through this surveillance system. (30 points).

2. The quality of the plans to monitor the utility of the HIV reporting system to ensure patient services (partner notification, medical referral, social service needs) and to provide data for public health purposes (monitor HIV trends, target prevention, provide a minimum estimate of those infected). (25 points).

3. The applicant's legal authority and ability to collect reports from health care providers and/or laboratories, willingness, and/or need to cooperate in a study with CDC and other participants, including use of standard data collection forms and software developed by CDC. (15 points).

4. The applicant's current activities in HIV infection reporting and for AIDS surveillance and how they will be applied to achieving standardized HIV reporting. (15 points).

5. How the project will be administered, including the size, qualifications, and time allocation of the proposed staff and the availability of the facilities to be used during the project

and a schedule for accomplishing the activities. (15 points).

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds. (Not weighted).

Other Requirements

Recipients must comply with the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1991), a copy of which is included in the application kit. In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the health department's HIV/AIDS Prevention Program.

Paperwork Reduction Act

Data collection initiated under this cooperative agreement has been approved by the Office of Management and Budget under number 0920–0009, "National Disease Surveillance Program—I. Case Reports," Expiration 12/31/92.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian Tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. A due date for state process recommendations will be 30 days after the application deadline date. (The appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receive after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.118.

Application Submission and Deadline

The original and two copies of the application form PHS–5161–1 (rev. 3/89) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry, NE., Atlanta, Georgia 30305, on or before August 16, 1991.

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 should request a legibly-dated U.S. Postal Service Postmark or obtain a legibly-dated receipt from a commercial carrier or the 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 either 1a. or 1b. 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

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry Road, NE., Atlanta, GA 30305 (404) 842–6508 or FTS 236–6508.

Please refer to Announcement Number 149 when requesting information and submitting an application.

Programmatic technical assistance may be obtained from Patricia L. Fleming, Surveillance Branch, Division of HIV/AIDS, Center for Infectious Diseases, 1600 Clifton Road NE., Mailstop E–47, Centers for Disease Control, Atlanta, GA 30333 (404) 639–2050 or FTS 236–2050.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone (202) 783–3238).

Dated: August 8, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–19324 Filed 8–13–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement No. 172]

Cooperative Agreement for the American Public Health Association (APHA); Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces the availability of funds to support the implementation of Healthy Communities 2000: Model Standards. Published in September 1990, Healthy People 2000: National Health Promotion and Disease Prevention Objectives set out health goals for the nation. Achieving these goals calls for a concerted effort on the part of State, territory and local public health agencies. Many tools and models are available to support efforts of the State and local agencies to develop and implement plans that will assure the successful achievement of those objectives. These tools and methods will be the focus of APHA-conducted workshops designed to guide State, territory and local agencies to set community objectives, which will contribute to achieving the national health objectives.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all of Healthy People 2000's priority areas. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 317 [42 U.S.C. 247(b)] as amended and 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended.

Eligible Applicants

Assistance will be provided only to the American Public Health Association (APHA) for this project. No other applications will be solicited or will be accepted.

APHA is uniquely qualified to be the recipient organization for the following reasons:

1. APHA has attained the preeminent position of public health organizations in expertise by virtue of their developing of the first edition of Model Standards: A Guide for Community Preventive Health Services. Further, APHA is the only organization that has closely collaborated with CDC over the past decade to develop and refine the Model Standards and the process of implementing the Model Standards with State, territorial and local health departments.

2. APHA is the only professional association that has implemented Model Standards pilot projects co-jointly with State, territorial and local health departments and thus is uniquely qualified to be experienced in this phase of Model Standards implementation. This continuing, close collaborative relationship is essential to maintaining the progress to date and to ensure future success of this cooperative agreement.

3. APHA established the Model Standards Steering Committee which developed the second edition of Model Standards in collaboration with other associations. For more than 10 years, this group oversaw the development and implementation of the Model Standards, provided technical assistance, tested Model Standards at several state, territorial and local agencies, and kept a history of the problems and concerns of users. The third revision, Healthy Communities 2000: Model Standards, consolidates the collective wisdom of these 10 years of work, the problems and concerns of the users, and the recent developments in the public health community. This experience has singularly positioned APHA to address and resolve the issues concerning the implementation of Healthy Communities 2000.

4. APHA is the sole repository for critical information about Model Standards and therefore only APHA has access to developmental and implementation knowledge required to carry out the proposed activities in this agreement. APHA's experience has been gained from past problem solving and cooperation with many public health organizations. Therefore, CDC looks to APHA as an active and full collaborator on monitoring the implementation of Healthy Communities 2000.

5. APHA is the nation's largest public health professional membership organization. It is unique as a professional organization with members from all 50 states representing national, state, territorial, and local agencies. APHA membership includes national experts and leaders covering the diverse range of subjects and tools addressed by Healthy Communities 2000 and Healthy People 2000.

6. APHA's multi-disciplinary focus helps to ensure that it is best qualified to review and develop "comprehensive" tools for implementing Healthy Communities 2000. This wealth of membership experience secures a large pool of built-in experts to assist with the proposed cooperative agreement activities. APHA has knowledge of the public health issues related to Healthy Communities 2000 and Healthy People 2000 including the capacity to provide technical assistance to public health agencies. Further, APHA has an acknowledged role in providing leadership in the development of national public health policies, and this leadership position will help assure accomplishment of the cooperative agreement's objectives.

7. APHA has access to and established relationships with other public health organizations, which help ensure that the full range of the public health community will be aware of activities proposed by this cooperative agreement.

Availability of Funds

It is anticipated that approximately $280,000 will be available in Fiscal Year 1991 to fund one cooperative agreement award. It is expected that the award will begin on or about September 30, 1991 and will be made for 12-month budget periods within a project period of up to 3 years. Continuation awards within the project periods will be made on the basis of performance and the availability of funds.

Purpose

The purpose of this project will be to develop and disseminate information on how to use available tools and methods, such as Assessment Protocol for Excellence in Public Health (APEX/PH) and Planned Approach to Community Health (PATCH), in the implementation of Model Standards. The project will focus APHA/CDC collaboration to enable state, territorial and local health agencies ot achieve Healthy People 2000 through the implementation of Healthy Communities 2000: Model Standards, which has been developed under the leadership of APHA. This project will emphasize the role of health data in decision making, the kinds of knowledge and skills needed for implementing Healthy Communities 2000, and the identification of successful tools and methods.

The long-term objectives of this cooperative agreement are to:

- Develop a framework for collaboration with CDC, the Association of State and Territorial Health Officials (ASTHO), the National Association of County Health Officials (NACHO), the United States Conference of Local Health Officers (USCLHO), the Association of Schools of Public Health (ASPH) and others to make state, territorial and local health agencies aware of, to disseminate information about, and to encourage the use of tools and methods to achieve Healthy People 2000 through Healthy Communities 2000.
- Produce publications that document the successful use of tools and methods to achieve Healthy People 2000 through the implementation of Healthy Communities 2000.
- Improve the use of health data in decision making at every stage in achieving Healthy Communities 2000 objectives.
- Develop a network that informs actual and potential users of Healthy Communities 2000 about successful strategies, as well as barriers to effective implementation.
- Document knowledge and skills that will expedite Healthy Communities 2000 implementation at the state, territorial and local levels.
- Encourage the participation of public health organizations in the continual refinements of Healthy Communities 2000.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below:

A. Recipient Activities

1. Establish a work group made up of members of national health organizations including ASPH, ASTHO, NACHO, and USCLHO, who have developed and or used various tools and methods for improving health agencies. The role of this group will be to provide guidance and direction in the identification of methods and tools available to assist in implementing Healthy Communities 2000.

2. Identify the knowledge and skills needed by the public health work force to use the methods and tools to implement Healthy Communities 2000;

determine the content and technology transfer methods to reach the target audience.

3. Conduct workshops for the state, territory and local agencies to promote and expand the use of tools and methods to implement Healthy Communities 2000. Subsequent workshops should address the application of tools and methods in conjunction with the role that data play in the process.

4. Conduct demonstration projects in the second and subsequent years at the state, territorial and local health agency levels on the use of appropriate tools, methods, activities, and strategies to implement Healthy Communities 2000.

5. Disseminate information on implementation strategies to APHA members and state, territorial and local agencies by establishing informational linkages with state and local health agencies using a variety of appropriate communications techniques.

6. Present a project update at the annual meeting of APHA for each project year of the cooperative agreement.

7. Document and refine the process, structure, tools, and methods used in the implementation of Healthy Communities 2000 including characteristics of both successful and unsuccessful applications; retrospective and prospective study approaches should be considered.

8. Collaborate actively with CDC in the assessment of the project.

B. CDC Activities

1. Collaborate with APHA on the planning and design of the workshops to promote the use of Healthy Communities 2000.

2. Participate with APHA in workshops, meetings, and conferences to promote the use of tools and methods (e.g., APEX/PH and PATCH) to implement Healthy Communities 2000.

3. Participate with APHA staff in the annual meeting of APHA on the project update.

4. Provide APHA with technical assistance with communications techniques/strategies to disseminate information on the tools and methods needed to implement Healthy Communities 2000.

5. Collaborate with APHA in evaluation of the project.

6. Collaborate with APHA in the selection of sites and the design and implementation of Healthy Communities 2000 demonstration projects at state and local health agencies.

Evaluation Criteria

The application submitted by APHA under this cooperative agreement will be reviewed and evaluated according to the following criteria:

A. Problem and Approach

1. The proposal clearly describes the problem to be addressed by the applicant. (10%)

2. Proposal provides complete background statement, which indicates that project personnel have a thorough knowledge of the subject area. (10%).

3. The general approach to be taken by the applicant in addressing the problem is described and is likely to contribute to the accomplishment of the goals and objectives of the cooperative agreement. (15%)

B. Management Plan and Personnel

1. Time-framed and measurable outcome and process objectives are clearly stated and are reasonable. (20%)

2. Methodology to be used in accomplishing the objectives, including the respective responsibilities of APHA and CDC for carrying out project activities, is described in detail and a schedule for accomplishing each activity proposed is clearly delineated and is reasonable. (25%)

3. An evaluation plan for measuring the accomplishment of both process and outcome objectives is provided and is clear and reasonable. (10%)

4. Qualifications of professional staff and support staff are commensurate with necessary levels of expertise to conduct these project activities. Allocations of staff time are reasonable. Facilities, space, and equipment necessary for conducting the project are available and adequate. (10%)

C. Budget Justification

Itemized budget for conducting the project, along with justification, is provided and is reasonable. (not scored)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

APHA must submit an original and two copies of the application Form PHS–5161–1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 19, 1991.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, please reference Announcement 172 and contact the following: Business Management Technical Assistance: Mr. Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6630.

Programmatic Technical Assistance: Thomas G. Lacher, Division of Public Health Systems, Public Health Practice Program Office, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone (404) 639–1967.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: August 8, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–19325 Filed 8–13–91; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration (HRSA) announces that applications are now being accepted for fiscal year 1992 Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 781(a)(1), title VII of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607. Comments are invited on the proposed funding priorities stated below. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for

this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 781(a)(1) authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. To be eligible to receive support for an Area Health Education Center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s). Applicants may request up to 3 years of support with the expectation that AHEC programs planned and developed in years 1 and 2 would be fully operational no later than the 3rd year. The period of Federal support should not exceed 6 years for an Area Health Education Center program and 9 years for an Area Health Education Center.

The Health Professions Reauthorization Act of 1988 (title VI of Pub. L. 100–607) amended the authority for the Area Health Education Centers program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 781(a)(2)(C) prohibiting and AHEC from being a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application for support, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

The Bureau of Health Professions, within the Health Resources and Services Administration has substantial programmatic involvement in the planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requries that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Cooperative Agreement for Area Health Education Centers Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the area health education centers.

In addition, certain preferential actions may apply in the implementation of this grant program. These categories of actions are defined below:

Funding Preferences

Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

Funding Priorities

Favorable adjustment of aggregate review scores when applications meet specified objective criteria.

The following funding preference, and funding priorities were established in FY 1989 after public comment and are being extended in FY 1992.

Funding Preferences for Fiscal Year 1992

In making awards for Fiscal Year 1992, a funding preference will be given to approved competing continuation applications.

Funding Priority for Fiscal Year 1992

A funding priority will be given to the following:

Applications which demonstrate substantial clinical training in one or more PHS Act, section 332 Health Professional Shortage Area(s) and/or a PHS Act, section 329 Migrant Health Center, PHS Act, section 330 Community Health Center or State designated clinic/center serving an underserved population. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

Proposed Funding Priorities for Fiscal Year 1992

Additionally it is proposed that a funding priority be given to:

1. Applications proposing centers that will serve Health Professional Shortage Areas with a greater proportion of

American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

This priority was established after public comment as a special consideration in FY 1989.

2. Applications which are innovative in their health professions educational approaches in two or more of the following areas: Infant mortality prevention, HIV/AIDS, substance abuse or geriatrics.

Larger projects can be expected to be active in more than one subject/content area.

The proposed funding priorities do not preclude funding of other eligible approved applications. Accordingly entities which do not qualify for or elect the proposed funding priorities are encouraged to submit applications.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1992 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 13, 1991, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priorities will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Requests for application materials and questions regarding grants policy and business management aspects should be directed to: Mrs. Frances Briscoe (U76), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, telephone (301) 443–6857.

Completed application materials should be returned to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Land, room 4C–05, Rockville, Maryland 20857, telephone (301) 443–6817.

The standard application form PHS 6025–1 HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 12, 1991. Applications will be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.824 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: July 9, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–19302 Filed 8–13–91; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement for Loans for Disadvantaged Students

The Health Resources and Services Administration (HRSA) announces that applications for fiscally year (FY) 1991 for the Loans for Disadvantaged Students (LDS) program are now being accepted under the authority of new section 740(c) of the Public Health Service Act (the Act), as added by the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101–527. New section 740(c) is part of the legislative authority for the Health Professions Student Loan (HPSL) program. As such, this program is governed by relevant requirements associated with the HPSL program (42 CFR part 57, subpart C), including, except as otherwise provided, school eligibility, student eligibility, institutional contributions, and terms of the loan. Additional school and student eligibility requirements for the LDS program are described below.

Approximately $2,900,000 is available in FY 1991 for competing applications for the LDS Program. It is expected that about 515 loans averaging $6,250 will be supported with these and the required $1:$9 school matching funds. Each loan will be provided for one academic year. Comments are invited on the proposed definitions, the methodology for implementing the statutory special consideration and procedures for calculating loans.

Purpose

The LDS program provides funding (new Federal Capital Contributions) to eligible health professions schools for the purpose of establishing revolving funds (LDS funds) which will be available for providing long-term, low-interest loans to eligible individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students at an eligible school. The new LDS fund (including one dollar in school funds for each nine dollars in Federal funds) is to be used for the purpose of (1) making loans to individuals from disadvantaged backgrounds, and (2) paying the costs of the collection of the loans and interest on the loans.

To implement the LDS program in FY 1991 in a timely manner, an existing definition of "an individual from a disadvantaged background" is being used. For purposes of the LDS program in FY 1991, "an individual from a disadvantaged background" is one who:

1. Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or

2. Comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the **Federal Register**.

The following income figures determine what constitutes a low income family for purposes of the Loans for Disadvantaged Students program for FY 1991.

Size of parents' family [1]	Income level [2]
1	$8,800
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1990, rounded to $100.

A revised definition of the term "individuals from disadvantaged backgrounds" is being published for comment in a separate notice for use in implementing various training grant, cooperative agreement, and student assistance programs under the authority of titles VII and VIII of the Act in the future. Section 740(e) of the Act, as added by the Disadvantaged Minority Health improvement Act of 1990, Public Law 101–527, November 6, 1990, requires the Secretary to define the term "disadvantaged" with respect to an individual for purposes of carrying out the new LDS program authorized under section 740(c) of the Act. Other new programs authorized by the Disadvantaged Minority Health Improvement Act of 1990 and making reference to individuals from disadvantaged backgrounds are:

- Scholarships for Disadvantaged Students (new section 760 of the Act); and
- Disadvantaged Health Professions Faculty Loan Repayment Program (new section 761 of the Act).

In addition, the term "an individual from a disadvantaged background" as currently used in established titles VII and VIII programs will be revised as appropriate using the rulemaking process.

Use of Funds

As loans made from the LDS fund are repaid, the money returned to the fund will continue to be used solely for support of students from disadvantaged backgrounds through the LDS program. HPSL funds provided program. HPSL funds provided to schools as previous years' Federal Capital Contributions, i.e., funds already circulating in the schools' revolving HPSL loan funds, may also be utilized for loans to individuals from disadvantaged backgrounds. Any school receiving LDS funds will be required to maintain separate accountability for these funds.

School Eligibility

As required by statute, to qualify for participation in the LDS program, a school must meet the HPSL school eligibility requirements and must be:

1. Carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and
2. Carrying out a program for recruiting and retaining minority faculty.

If a school has no students from disadvantaged backgrounds, or no full-time minority faculty, or provides no data as required in the application materials, it is not eligible for participation in the LDS program. A school that is able to provide required data will be eligible for participation in the current award cycle. Data requirements for the current cycle are contained in the application materials. However, failure to provide certain additional data may make a school ineligible for special consideration (see below) and may jeopardize future program participation.

In addition, the school must agree in its Fiscal Year 1991 application to carry out all of the statutory requirements listed below:

1. Ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school. This does not include normal coursework, that by definition includes minority health issues (e.g., sickle cell anemia in a pathology class), but refers to coursework reflecting an institutional awareness of the special health needs of minority populations;
2. Enter into arrangements with one or more health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, for the purpose of providing students of the school with experience in providing clinical services to such individuals;
3. Enter into arrangements with one or more public or nonprofit private secondary educational institutions and undergraduate institutions of higher education for the purpose of carrying out programs regarding:
   a. The educational preparation of disadvantaged students, including minority students, to enter the health professions; and
   b. The recruitment of disadvantaged students, including minority students, into the health professions; and
4. Establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school. This program may include the involvement of students, community health professionals, faculty, alumni, past recipients of Health Career Opportunity Program (HCOP) funds, faculty/staff of feeder schools, etc., in institutionally organized activity (e.g., tutoring, counseling, and summer/bridge programs).

A school will be required to carry out each of the activities specified above by not later than one year after the date on which the first Federal Capital Contribution is made to the school under section 740(c). In addition, a school will be required to continue to carry out all described activities and also the student/faculty recruitment and retention activities throughout the period during which the school is making loans from its LDS loan fund.

Evaluation Criteria for Fiscal Year 1992

Beginning with FY 1992 applications will be evaluated on the degree to which the schools meet the statutory requirements listed above. Guidance for presenting the information will be provided in the FY 1992 application materials.

Student Eligibility

As required by statute, to qualify for a loan from the LDS fund, a student must meet the definition of an individual from a disadvantaged background.

Proposed Definitions

Black means a person having origins in any of the black racial groups of Africa.

Hispanic means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

American Indian or Alaskan Native means a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46 dated May 3, 1974.

Native American, as defined in Public Law 101–527, means American Indians, Alaskan Natives, Aleuts, and Native Hawaiians.

Minority, with respect to faculty, refers to Blacks, Hispanics, Native Americans, Filipinos, Koreans, Pacific Islanders, and Southeast Asians whose percentage among the total supply of practitioners in the applicable health profession is below that group's percentage in the total population.

Health professions school means a public or private nonprofit school of medicine, school of dentistry, school of osteopathic medicine, school of podiatric medicine, school of optometry, or school of veterinary medicine as defined in sections 701(4) of the Act, or a school of pharmacy as defined in

section 747 of the Act, which is located in a State as defined in section 701(11) of the Act, and which is accredited as provided in section 701(5) of the Act.

Proposed Methodology for Implementing the Statutory Special Consideration

A school's funding will be enhanced based on the extent of underrepresented minority student enrollment. (Refer to the section below on the procedures for allocating funds.)

Special consideration will be given to any school of medicine, osteopathic medicine, dentistry, optometry, podiatric medicine, pharmacy, or veterinary medicine that provides information, according to instructions in the application materials, that evidences an underrepresented minority enrollment that exceeds the national average for the particular discipline. For purposes of determining school eligibility for the special consideration, *underrepresented minorities* will be defined as Blacks, Hispanics, and Native Americans. Although certain Asian subgroups (i.e., Filipinos, Koreans, Pacific Islanders, and Southeast Asians) are considered to be underrepresented in the health professions and are included as minorities for purposes of program requirements relating to faculty recruitment and retention (see above), national data on these subgroups are not available as a basis for establishing national average enrollment of underrepresented minorities for the particular health professions discipline.

For purposes of the FY 1991 award cycle, the national average enrollments of Blacks, Hispanics, and Native Americans (in combination) are: for medicine, 12.3 percent; osteopathic medicine, 6.9 percent; dentistry, 14.1 percent; pharmacy, 10.2 percent; podiatric medicine, 12.9 percent; optometry, 9.3 percent; and veterinary medicine, 5.6 percent).

Proposed Procedures for Calculating Loans

Funds will be awarded on a per capita basis, by comparing the enrollment of each eligible school, weighted in accordance with any special consideration, with the total enrollment of all eligible schools. A school with an above average underrepresented minority enrollment will be given double credit (i.e., its enrollment will be doubled for awarding purposes). The basic procedure for awarding funds is in accordance with a statutory procedure which must be followed in awarding HPSL loan funds.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Loans for Disadvantaged Students Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Interested persons are invited to comment on the proposed definitions, methodology for implementing the statutory special consideration, and the proposed procedures for calculating loans. Normally, the comment period would be 60 days, but due to the need to implement the LDS Fiscal Year 1991 award cycle, this comment period has been reduced to 30 days,.

All comments received on or before September 13, 1991 will be considered before the final definitions, methodology for implementing the proposed statutory special consideration, and the procedures for calculating loans are established. No funds will be allocated until a final notice is published stating whether the final definitions, methodology for implementing the statutory special consideration, and the final procedures for calculating loans will be applied.

Written comments should be addressed to: Mr. Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1173.

Questions regarding program policy and business management aspects should be directed to: Mr. Bruce Baggett, Chief, Student Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–34, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4776.

Application Requests

The application form and instructions have been submitted to Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Application materials will be available when OMB approval is received. Upon OMB approval, application materials will be mailed to all eligible schools along with instructions for returning completed applications.

The application deadline date is September 13, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for consideration. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The Catalog of Federal Domestic Assistance Number for the Loans for Disadvantaged Students is 93.342. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 31, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–19300 Filed 8–13–91; 8:45 am]

BILLING CODE 4160–15–M

Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S.C. 282(b)(6), the Director, National Institutes of Health (NIH), announces the establishment/or amendment of the following committees:

Visual Sciences A Study Section
Visual Sciences C Study Section

Visual Sciences A Study Section was amended and restructured; part of its responsibilities were transferred to the newly established Visual Sciences C Study Section. It will now have responsibility for all aspects of anterior segment eye disease with emphasis on etiology, diagnosis, prevention, management, and therapy.

Visual Sciences C Study Section responsibility will include all aspects of retinal eye disease with emphasis on etiology, diagnosis, prevention, management, and therapy.

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: August 7, 1991.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 91–19243 Filed 8–13–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disease; Meeting, National Kidney and Urologic Diseases Advisory Board and the Research Subcommittee and the Health Care Issues Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 16, 1991. The Research Subcommittee and the Health Care Issues Subcommittee meetings will be held from 8 a.m. to 10 a.m. to discuss the relevant research and health care issues. The full Board meeting will be held from 10:15 a.m. to approximately 5 p.m. to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. All meetings will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. All meetings, will be open to the public. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr Ralph Bain, Executive Director, National Kidney and Urolgic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville,, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members.. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 6, 1991.

Jeanne N. Ketley,

Acting Committee Management Officer, NIH.

[FR Doc. 91–19244 Filed 8–13–91; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute: Opportunity for Licensing Agreements for the Physician Data Query (PDQ) and CANCERLIT Databases

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) is the publisher and proprietor of the PDQ and CANCERLIT computer databases. In order to increase the dissemination and use of cancer treatment information and make the databases widely available to health professionals, the NCI is seeking to establish non-exclusive license agreements with organizations for the PDQ and/or CANCERLIT databases. Licenses for the PDQ database are available for online, CD–ROM, and MUMPS delivery systems. A "C" version will also soon be available. Licenses for the CANCERLIT database are available for online and CD–ROM delivery systems.

ADDRESSES: Questions about this opportunity may be addressed to Ms. Bonnie Harding, International Cancer Information Center, 9030 Old Georgetown Road, Building 82, room 107, Bethesda, MD 20892.

DATES: Inquiries will be accepted indefinitely.

SUPPLEMENTARY INFORMATION: The PDQ database consists of three linked files: (1) A Cancer Information File which contains state-of-the-art statements and information for patients for all major types of cancer, (2) a Protocol file that contains all active NCI-supported clincial trials and clinical trials submitted voluntarily by investigators at institutions across the country, standard therapy protocols describing treatments of proven efficacy, and closed trials no longer open to patient accrual, and (3) a Directory file which provides information on physicians and organizations that provide cancer treatment.

The CANCERLIT database consists of bibliographic records referencing cancer research publications dating from 1963 to the present. The database is updated monthly with approximately 6000 new records. Most records carry abstracts, and all contain citation information and additional descriptive data fields. Records entered since January 1980 are indexed with the MeSH controlled vocabulary of the National Library of Medicine.

Potential Licensees must be able to mount the entire database and make all files accessible to end-users. The end-user base should be made up of primarily physicians and other health care professionals. Licensees must provide access to only the most current version of the database(s) as provided by the NCI. Online and MUMPS/C versions must be updated monthly. CD–ROM delivery systems must be updated at least every three months. For the PDQ database on CD–ROM, magnetic diskette updates of new material must be provided each month in which a CD–ROM is not issued. Reports of database usage must be provided to the NCI on a monthly basis. The NCI must approve proposed delivery systems as a part of entering into a license agreement. Information on licensing fees is available upon request from the above address.

Dated: July 24, 1991.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91–19242 Filed 8–13–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research

AGENCY: Public Health Service, HHS.

ACTION: Notice of extension to comment period.

SUMMARY: The Public Health Service (PHS) is extending for 30 days the public comment period on its policies and procedures for dealing with possible scientific misconduct in extramural research. The extension is in response to several written requests for an extension of time due to the complexity of the Notice of Policies and Procedures in 56 FR 27384 (June 13, 1991).

DATES: Comments on these policies and procedures are invited and must be submitted by September 13, 1991.

ADDRESS: Written comments should be mailed to Dr. Lyle W. Bivens, Office of Scientific Integrity Review, 5515 Security Lane, Rockwall II Building, suite 11–13, Rockville, MD 20852 or delivered to the same location between 9 a.m. and 4 p.m. on weekdays, Federal holidays excepted. Comments received may be inspected at the same location during these hours.

FOR FURTHER INFORMATION CONTACT: Dr. Lyle W. Bivens, (301) 443–5300.

SUPPLEMENTARY INFORMATION: These policies and procedures apply to all instances of possible scientific misconduct involving research, research training or research related activities for which funds have been provided or requested under the PHS Act. They describe the respective roles and responsibilities of PHS offices and officials in monitoring, investigating and resolving instances of possible scientific misconduct and are issued under the authority of sections 201, 493(b) and 501(f) of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 202, 42 U.S.C. 289b(b), and 42 U.S.C. 290aa(f).

The Association of American Universities, the National Association of State Universities and Land Grant Colleges, and the Federation of American Societies for Experimental Biology and other interested parties

have requested an extension of time within which to file comments on the policies and procedures.

Therefore, the PHS is extending the comment period to September 13, 1991.

Dated: August 8, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-19473 Filed 8-12-91; 4:15 pm]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15; AA-13286]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971 43 U.S.C. 1601, 1613(h)(8), will be issued to Chugach Alaska Corporation for approximately 85 acres. The lands involved are in the vicinity of Cape Yakataga, Alaska.

Copper River Meridian, Alaska

T. 21 S., R. 17 E.
Sec. 23, W½, that portion of Mineral Survey application AA-12609 which was excluded from Interim Conveyance No. 830 issued on August 17, 1984.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 13, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 91-19319 Filed 8-13-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-968-4230-15]

Publication AA-60709; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613, and section 12 of the Act of January 2, 1976, as amended, 43 U.S.C. 1611 n., will be issued to Cook Inlet Region, Inc., for approximately 95.10 acres. The lands involved are in the vicinity of Elmendorf Air Force Base, Alaska.

Seward Meridian, Alaska

T. 13 N., R. 3 W.,
Sec. 12, Lot 9.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 13, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Margaret J. McDaniel,

Lead Land Law Examiner, Branch of Cook Inlet and Ahtna, Adjudication.

[FR Doc. 91-19316 Filed 8-13-91; 8:45 am]

BILLING CODE 4310-JA-M

[MT-060-01-4320-02-ADVE]

Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Notice of Grazing Advisory Board meeting

SUMMARY: The Lewistown District Grazing Advisory Board will meet September 10, 1991. The agenda will be:

10 a.m.—Welcome and Opening Comments
10:15 a.m.—Fiscal Year 1992 Range Improvement Projects
15:15 a.m.—Judith, Valley, Phillips Resource Management Plan
12 noon—Lunch
1 p.m.—Resource Management Plan (Continued)
1:30 p.m.—Rangeland Program Summary Update
2:15 p.m.—Fiscal Year 1992 Allotment Management Plans
3 p.m.—Adjourn

Public comments will be sought at the end of each agenda item.

Location: Public library, Malta, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, P.O. Box 1160, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee Act, 5 U.S.C., appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: August 5, 1991.

F. Owen Billingsley,

Acting District Manager.

[FR Doc. 91-19280 Filed 8-13-91; 8:45 am]

BILLING CODE 4310-DN-M

[CA-010-01-4333-08]

Invitation for Public Input to the Caliente Reserve Management Plan Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of notice of intent.

SUMMARY: The March 23, 1989 Notice of Intent to prepare a Resource Management Plan/Environmental Impact Statement (RMP/EIS) for California's Caliente Resource Area in the Bakersfield District is hereby amended. Pursuant to 43 CFR 1610.2 the public is notified that a wilderness inventory of acquired lands will be a part of the RMP. In accordance with 43 CFR 1610.2 and 1610.7-2, the public is invited to nominate Areas of Critical Environmental Concern (ACECs) on public land within the resource area. Nominated sites will be considered during preparation of the RMP/EIS.

SUPPLEMENTARY INFORMATION: The Caliente Resource Area is located in central California, and ranges from the pacific coastline to the crest of the Sierra Nevada mountains. It contains

approximately 600,000 acres of public land in Kern, Kings, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties. An RMP/EIS covering Resource Area is being prepared to address management of these lands in light of new congressional direction, BLM supplemental program guidance, and changing resource conditions.

Approximately 90,000 acres have been acquired since the last wilderness study was conducted in the resource area. A study to determine wilderness suitability of these lands in accordance with section 202 of the Federal Land Policy and Management Act (FLPMA) will be conducted as a part of the preparation of the RMP. Findings of the intensive inventory will be published in the draft RMP/EIS. The results of the wilderness study, along with the suitability recommendations, will be included in the final RMP/EIS.

One facet of RMP/EIS preparation is evaluation of new ACECs. Threatened, endangered, and sensitive plant an animal species, biodiversity, cultural resources and paleontological resources are some of the values within the resource area that merit consideration for ACEC designation. Potential conflicts with these resources include oil and gas development, land disposal, and grazing. A total of 9 existing ACECs are currently being reevaluated. Their names and general locations are:

Kern County (east half)

Piute Cypress
T. 27 S., R. 32 & 33 E., Mt. Diablo Base & Meridian (MDB&M)

Kern County (west half)

Goose Lake
T. 27 S., R. 22 E., MDB&M
Reef Ridge
T. 29 S., R. 20 E., MDB&M

San Luis Obispo County

Elkhorn Plain
T. 31 S., R. 21 E., and T. 32 S., R. 22 E., MDB&M
San Andreas Fault Scarp ACEC/Research Natural Area
T. 32 S., R. 22 E., MDB&M and T. 11 N., R. 25 W., San Bernardino Base & Meridian (SBB&M)
Soda Lake
T. 31 S., R. 19 & 20 E., MDB&M

Santa Barbara County

Point Sal
T. 10 N., R. 36 W., SBB&M

Santa Barbara, San Luis Obispo, and Ventura Counties

California Rocks & Islands Wildlife Sanctuary
Unsurveyed

Tulare County

Blue Ridge
T. 19 S., R. 29 E., MDB&M

An additional 22 areas are already being considered for designation. Those areas and their general locations are:

Kern County (east half)

Erskine Creek
T. 27 S., R. 33 E., MDB&M
Horse Canyon/Sand Canyon
T. 31 & 32 S., R. 34 E., MDB&M
Kernville Hot Springs
T. 25 S., R. 33 E., MDB&M
Keyesville
T. 26 S., R. 32 & 33 E.; T. 27 S., R. 32 E., MDB&M
Walker Pass
T. 24 S., R. 36 & 37 E.; T. 25 S., R. 36 & 37 E.; T. 26 S., R. 36 & 37 E., MDB&M

Kern County (west half)

Alkali Sink
T. 32 S., R. 26 E.; T. 26 S., R. 21 E., MDB&M
Bittercreek
T. 10 N., R. 23 & 24 W., SBB&M
Blue Stone Ridge
T. 25 S., R. 16 & 17 E., MDB&M
Buena Vista Valley
T. 11 N. , R. 23 & 24 W.; T. 12 N., R. 23 & 24 W., SBB&M; T. 30 S., R. 22 E.; T. 31 S., R. 22, 23, & 24 E.; T. 32 S., R. 22, 23, & 24 E., MDB&M
Lokern
T. 29 S., R. 22 & 23 E.; T. 30 S., R. 22 & 23 E., MDB&M

San Luis Obispo County

Carrizo Plain
T. 10 N., R. 24 & 25 W.; T. 11 N., R. 24, 25, 26, 27, & 28 W.; T. 12 N., R. 25, 26, 27, & 28 W., SBB&M; T. 30 S., R. 19, 20, & 21 E.; T. 31 S., R. 19, 20, 21, & 22 E.; T. 32 S., R. 19, 20, 21, 22 , & 23 E., MDB&M
Cypress Mountain
T. 27 S., R. 9 & 10 E., MDB&M
Frog Pond Mountain
T. 28 S., R. 12 E., MDB&M
Irish Hills
T. 31 S., R. 11 E., MDB&M
Rusty Peak
T. 28 S., R. 11 E., MDB&M
Salinas River
T. 29 S., R. 13 E., MDB&M
Tierra Redonda
T. 25 S., R. 9 E., MDB&M

Tulare County

Case Mountain
T. 17 S., R. 29 E., MDB&M
Chimney Peak
T. 23 S., R. 35 & 36 E.; T. 24 S., R. 35, 36, & 37 E., MDB&M
Deer Spring
T. 22 S., R. 37 E., MDB&M
North Fork of the Kaweah River
T. 16 S., R. 28 E., MDB&M

Kings County

Kettleman Hills
T. 21 S., R. 17 E.; T. 22 S., R. 17 & 18 E.; T. 23 S., R. 18 & 19 E., MDB&M

All ACEC nominations will be evaluated against the relevance and importance criteria laid out in 43 CFR 1610.7–2. Nominations should include the specific location of the site, a description of the value, resource, system, or hazard which merits attention, and a description of any threats to or posed by those qualities.

DATES: All ACEC nominations must be received at the Bureau of Land Management, Caliente Resource Area, 4301 Rosedale Highway, Bakersfield, CA 93308, by September 20, 1991. Publication of the draft plan, which will include the results of the initial/intensive wilderness inventory of acquired lands and afford the public an opportunity to review and comment on the proposed ACECs, is scheduled for late November, 1991. The final plan is expected to be complete in February, 1993, and will include recommendations on suitability for wilderness designation.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Area Manager, Bureau of Land Management, Caliente Resource Area, 4301 Rosedale Highway, Bakersfield, CA 93308, telephone 805–861–4236. Documents relevant to this planning effort are available for public review at the same address.

Dated: August 5, 1991.

Ken Volpe,

Acting Area Manager.

[FR Doc. 91–19282 Filed 8–13–91; 8:45 am]

BILLING CODE 4310–40–M

[OR–943–01–4214–10; GP1–296; OR–47267]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 960 acres of National Forest System land for protection of the Thunder Egg Lake Agate Beds near Lakeview. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 12, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: On July 19, 1991, the United States Department of Agriculture, Forest Service, filed an

application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8;
Sec. 17, N½.

The area described contains 960 acres in Lake County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Oregon State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Orgeon State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be hold, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period include other national forest management activities, including permits, licenses, and cooperative agreements that are compatible with the intended use will be permissible under the discretion of the authorized officer.

Dated: July 24, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-19317 Filed 8-13-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-11; GP1-305; OR-36244]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Air Force proposes that a 21.10-acre portion of the land withdrawal for the Kingsley Air National Guard Facility continue for an additional 25 years and requests that the land involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The U.S. Department of the Air Force proposes that a portion of the existing land withdrawal made by the Bureau of Land Management Order dated February 11, 1947, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The 21.10 acres involved are located in section 22, T. 39 S., R. 9 E., in Klamath County, five miles southeast of the City of Klamath Falls.

The purpose of the withdrawal is to protect the Kingsley Air National Guard Facility. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The U.S. Department of the Army, Corps of Engineers requests no change in the purpose of segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 2, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-19372 Filed 8-13-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-11; GP1-308; ORE-03102E]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a 17.50-acre portion of the land withdrawn for administrative purposes continue for an additional 20 years and requests that the land involved remain closed to mining and opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The U.S. Department of Agriculture, Forest Service, proposes that a portion of the existing land withdrawal for the Dixie Forest Camp within the Malheur National Forest made by Public Land Order No. 990, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The 17.50 acres involved are located in section 11, T. 12 S., R. 34 E., W.M., in Grant County, approximately 20 miles northeast of John Day.

The withdrawal currently segregates the land from surface entry and mining. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the land be opened to such forms of disposition as may by law be made of National Forest System land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 1, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–19373 Filed 8–13–91; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Receipt of Application for Permit; Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Corona Development Company in the City of Corona, the County of Riverside, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Corona Development Company (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize completion of grading activity on and adjacent to the applicant's 715 acre residential development project in the City of Corona, California. This activity would result in the direct take of Stephens' kangaroo rate (*Dipodomys stephensi*) presently occupying 4.48 acres that is in the path of grading, while an additional 65.31 acres of occupied habitat will be indirectly impacted. The Service also announces the availability of a draft environmental assessment (EA) for the incidental take permit. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before 30 days from the publication date of this notice.

ADDRESSES: Persons who wish to review the application may obtain a copy by writing the Office of Management Authority. Persons wishing to review the draft EA may obtain a copy by writing the Office of Management Authority or the Laguna Field Office. Documents will be available by written request for public inspection, by appointment, during normal business hours at the Office of Management Authority or the Laguna Niguel Field Office. Written data or comments concerning the application and EA should be submitted to the Office of Management Authority. Please reference permit number PRT 758071 in your comments.

U.S. Fish & Wildlife Service, Office of Management Authority, 440 N. Fairfax Dr., room 430, Arlington, VA 22033, (703) 358–2104 or FTS 921–2104.

U.S. Fish & Wildlife Service, Laguna Niguel Field Office, 24000 Avila Road, Laguna Niguel, CA 92656, (714) 643–4270 or FTS 795–4270.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne "Brooks" Harper at the above Laguna Niguel Field Office.

SUPPLEMENTARY INFORMATION: The Corona Development Company ("CDC"), proposes to complete grading operations and construction operations on and around its 715-acre Corona Ranch residential development located in the City of Corona, County of Riverside, California. (Approximately 88 of the 175 acres of the master-planned community have been conveyed to other ownership since the project's initiation.) These operations will entail the modification of 4.48 acres of habitat presently occupied by a federally and state listed endangered species, the Stephens' kangaroo rat (*Dipodomys stephensi*) ("SKR"). An additional 65.29 acres of the project site are occupied by SKR, although the CDC does not propose to take these animals via direct impacts. CDC proposes a mitigation measure that assumes all animals on the site will be taken, whether or not CDC proposes to disturb presently occupied habitat. Finally, construction of an off-site road that connects to the project will result in blasting and drilling activities relatively near to occupied SKR habitat, although no road work will occur within that occupied habitat.

While final operations on or near the site will result in the direct "take" of an undetermined number of the species, the number is quite small, and the terms of this Conservation Plan will mitigate for that take by paying $136,000 to an SKR-related recovery program. A Conservation Plan is attached to the permit application. This Conservation Plan details project actions that will result in the "take" of endangered species, and specifies the measures that will be incorporated as project actions to mitigate such taking.

The EA considers the environmental consequences of six alternatives, including the proposed action and the no action alternative. The proposed action would result in the immediate extirpation of SKR on 4.48 acres of habitate adjacent to road construction activity, and the eventual extirpation of SKR occupying an additional 65.31 acres of land though not as a result of any physical disturbance. Although the no action alternative would extend the life of SKR occupying the 4.48 acres proposed for immediate grading, it would nevertheless result in the extirpation of those animals as well as the 65.31 acres of animals as a result of the project being isolated from viable habitat preserves. Other alternatives considered would all result in the long term extirpation of these SKR, but none of them proposes mitigation at the level proposed by the permit applicant. As a result, all of the alternatives, including the no action alternative, were rejected. Under the proposed action, the permit applicant will make a payment of $136,000 towards long-range SKR conservation program.

Dated: August 9, 1991.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–19352 Filed —91; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–170]

Certain Bag Closure Clips; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan C. Cockburn, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Daniel M. Duty, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: August 5, 1991.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 91–19934 Filed 8–13–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–326]

Certain Scanning Multiple-Beam Equalization Systems for Chest Radiography and Components Thereof; Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, Steven A. Glazer, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation in addition to Alesia M. Woodworth, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 5, 1991.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 91–19335 Filed 8–13–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–326]

Certain Scanning Multiple-Beam Equalization Systems for Chest Radiography and Components Thereof

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on September 3, 1991, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: August 8, 1991.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 91–19336 Filed 8–13–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31913]

Charles H. Clay, Douglas M. Head, and Kent P. Shoemaker, Continuance in Control Exemption; Twin Cities & Western Railroad Co.

Charles H. Clay, Douglas M. Head, and Kent P. Shoemaker have filed a notice of exemption to continue to control Twin Cities & Western Railroad Company (TCW) upon its becoming a rail carrier.[1] Messrs. Clay, Head, and Shoemaker currently control Red River Valley & Western Railroad Company, which operates in North Dakota and Minnesota. The parties indicate that: (1) The transaction does not involve lines that will connect with each other or with any other railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Thus, the transaction involves the continuance in control of nonconnecting carriers under the class exemption at 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock. Ry. Co.—Control—Brooklyn Eastern Dist, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Suzanne M. Te Beau, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005.

Decided: August 8, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19341 Filed 8–13–91; 8:45 am]

BILLING CODE 7035–01–M

[1] TCW's acquisition and operation of a lien of Soo Line Railroad Company (Soo) and TCW's grant of trackage rights to Soo are the subject of notices of exemption in Finance Docket Nos. 31912 and 31914, respectively. The line to be acquired extends between milepost 435.06, near Hopkins, MN, and milepost 578.93, near Appleton, MN. In addition, Soo will grant TCW trackage rights over Soo's line between milepost 578.93 and milepost 612.74, near Milbank, SD, and over Soo rail lines in the Twin Cities Terminal. TCW will grant trackage rights back to Soo over the line it is acquiring.

[Finance Docket No. 31902]

Gilchrist Timber Co., Acquistion and Operation Exemption; Klamath Northern Railway Co.

Gilchrist Timber Company (Gilchrist), a noncarrier, has filed a notice of exemption to acquire and operate 10.5 miles of rail line owned by Klamath Northern Railway Company (Klamath) extending between milepost 0.0, at Gilchrist Junction, and milepost 10.5, at Gilchrist, in Klamath County, OR. Consummation was expected to occur during the last week of July 1991.

This transaction assertedly involves only a change in ownership, not a change in carrier operations or overall levels of employment. Shortly after the involved acquisition, Gilchrist plans to sell Klamath's operating assets and substantially all of its own operating assets to Crown Pacific Ltd.[1]

Any comments must be filed with the Commission and served on: Charles F. Shotts, Gilchrist Timber Company, Gilchrist, OR 97737.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 8, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19332 Filed 8–13–91; 8:45 am]

BILLING CODE 7035–01–M

[1] Subsequent acquisition and operation by Crown Pacific Ltd. is not exempted by this notice.

[Finance Docket No. 31914]

Soo Line Railroad Co., Trackage Rights Exemption; Twin Cities & Western Railroad Co.

Twin Cities & Western Railroad Company (TCW) has agreed to grant trackage rights to Soo Line Railroad Company (Soo) over a line of railroad that TCW is acquiring from Soo in the concurrently filed notice of exemption in Finance Docket No. 31912.[1] The line of railroad, known as the Ortonville Line, extends between milepost 435.06 (near Tower E–14), near Hopkins, and milepost 578.93, near Appleton, in Swift, Chippewa, Renville, McCleod, Carver, and Hennepin Counties, MN. The trackage rights were to have become effective on July 26, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: August 8, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19342 Filed 8–13–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31912]

Twin Cities & Western Railroad Co., Acquisition and Operation Exemption; Soo Line Railroad Co.

Twin Cities & Western Railroad Company (TCW), a noncarrier, has filed

[1] In Finance Docket No. 31912, Soo is also granting TCW trackage rights over Soo lines in the Twin Cities Terminal and over the Soo line between milepost 578.93, near Appleton, MN, and milepost 612.74, near Milbank, SD.

a notice of exemption to acquire and operate 143.87 miles of rail line in Minnesota owned by Soo Line Railroad Company (S00).[1] The line extends between milepost 435.06, near Hopkins, and milepost 578.93, near Appleton. In addition, TCW will acquire trackage rights over Soo's connecting line between milepost 578.93 and milepost 612.74, near Milbank, SD, and Soo rail lines in the Twin Cities Terminal.

Any comments must be filed with the Commission and served on: Suzanne M. Te Beau, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

TCW shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[2]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 8, 1991.

By the Commission, David M. Knoschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19340 Filed 8–13–91; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use by Transmore Consultants, Inc. for the Port of Miami

The Commission has received a request from Transmore Consultants, Inc. for permission to use certain data from the Commission's 1984, 85, 86, 87, 88, 89, and 90 ICC Waybill Samples.

A copy of the request (WB650–7/22/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte No. 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19331 Filed 8–13–91; 8:45 am]

BILLING CODE 7035–01–M

[1] A notice of exemption has been filed in Finance Docket No. 31914 for TCW to grant trackage rights to Soo over the line to be acquired here. A notice of exemption has been filed in Finance Docket No. 31913 for Charles H. Clay, Douglas M. Head, and Kent P. Shoemaker to continue to control TCW and Red River Valley & Western Railroad Company upon consummation of this transaction.

[2] TCW certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

DEPARTMENT OF JUSTICE

Information Collections Under Review

August 9, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or the Method of Collection

(1) Petition to Classify Orphan as an Immediate Relative. Application for Advance Processing of Orphan Petition.

(2) I–600, I–600A, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Forms will be used to determine eligible orphans and for the advanced processing of such eligible orphans.

(5) 34,000 annual respondents at .5 hours per total response.

(6) 17,000 hours.

(7) Not applicable under 3504(h).

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(1) Supplementary Statement for Graduate Medical Trainees.

(2) Form I–644, Immigration and Naturalization.

(3) On occasion.

(4) Individuals or households. This form is used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) 3,000 annual respondents at .083 hours per response.

(6) 249 annual burden hours.

(7) Not applicable under 3504(h).

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(1) Application for Issuance or Replacement of Northern Mariana Card.

(2) I–777, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used to obtain a U.S. citizen I.D. card by a U.S. citizen born in the Northern Mariana Islands; the issuance process will end on July 1, 1991. However, the replacement provision for use of the form will remain in effect.

(5) 100 annual respondents at .5 hours per response.

(6) 50 annual burden hours.

(7) Not applicable under 3504(h).

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(1) Request for Certification of Military or Naval Service.

(2) Form N–426, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used to verify the military or naval service claimed by an applicant for naturalization under sections 328 or 329 of the INA.

(5) 32,000 annual respondents at .166 hours per response.
(6) 5,312 annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Certificate of citizenship in behalf of an Adopted Child.
(2) Form N–463, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used to file application by a U.S. citizen parent or parents in behalf of an adopted child to become a U.S. citizen and receive a Certificate of Citizenship.
(5) 20,000 annual respondents at .5 hours per response.
(6) 10,000 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91–19328 Filed 8–13–91; 8:45 am]
BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Entergy Operations, Inc., et al., Grand Gulf Nuclear Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Revoking Construction Permit No. CPPR–119 which authorized construction of the Grand Gulf Nuclear Station, Unit No. 2 (Grand Gulf 2), located in Claiborne County, Mississippi. Entergy Operations, Inc. (Entergy Operations) on behalf of itself and System Energy Resources, Inc., Mississippi Power & Light Company, and South Mississippi Electric Power Association are licensees under the permit. The latest construction completion date in the permit is October 1, 1984. Construction activities at this site were discontinued on September 18, 1985. By letter dated December 27, 1990, Entergy Operations requested that the construction permit for Grand Gulf 2 be terminated.

Environmental Assessment

Identification of Proposed Action

The proposed action is to issue an order that would terminate Construction Permit No. CPPR–119 for Grand Gulf 2. This action was requested by Entergy Operations on behalf of itself and the other licensees because they do not plan to complete the plant.

The staff made a site visit to the Grand Gulf Nuclear Station Unit 2 on June 5, 1991. The primary objective of the site visit was to determine whether the licensee's efforts to stabilize the site had considered all critical site areas. Particular effort was made to inspect areas of the site which potentially could be subject to continued erosion and contribute silt to surface water bodies, as well as to identify areas where standing water could result in saturated soils. Additionally, the staff was interested in the status of burn pits and solid waste disposal areas that utilized or received construction waste from Unit 2.

The entire site including the sedimentation ponds, the shoreline with the Mississippi River and the area that was used for solid waste disposal was examined. Backfilling around building and component foundations belonging to Grand Gulf has long been completed. The potential for erosion contributing silt to site drainage courses from the Unit 2 facilities is low. The drainage pattern from the entire site is very well developed. All disposal areas have been closed and revegetated leaving only the burn pits. There is no evidence of erosion in this area. The staff found that the licensee has implemented in aggressive site-wide program to control erosion.

Based upon this review and the results of our June 5, 1991, site visit, the staff concludes that there will be no significant environmental impact resulting from the termination of Construction Permit No. CPPR–119 for Grand Gulf 2.

The staff concludes, based on its review and inspection, that the Grand Gulf 2 site is in an environmentally stable condition.

Need for Proposed Action

The licensees have terminated construction of the nuclear power plant. This action by NRC would terminate the construction permit.

Environmental Impacts of the Proposed Action

This is a simple administrative action of terminating the outstanding permit to reflect the fact that there are no longer any new nuclear utilization facilities under construction at the Grand Gulf 2 site and the site has been adequately stabilized.

Alternatives to the Proposed Action and Alternative Use of Resources

This action, for which there are no appropriate alternatives, does not involve the use of and, therefore, will not affect, available resources.

Agencies and Persons Consulted

The NRC staff reviewed Entergy Operations' request for termination of the construction permit and conducted the environmental review and inspection of the facility. The staff on July 12, 1991, contacted Ms. N. Bethune, U.S. Environmental Protection Agency (EPA), Region IV to discuss the Grand Gulf Nuclear Station solid waste disposal area which is a part of the Unit 1 site. The EPA will visit the Facility this year to obtain samples of the disposal area for analysis. Should any remediation be required, it would be coordinated by the EPA. The NRC staff will continue to monitor the EPA's efforts in this area. The NRC did not consult any additional agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of this proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see Entergy Operations' request for termination of Construction Permit No. CPPR–119 dated December 14, 1990, the NRC staff's Safety Evaluation Report for Grand Gulf Unit 2, Termination of Construction Permit dated June 27, 1991, and the NRC staff's Environmental Evaluation of the Proposed Termination of Construction Permit for Grand Gulf Unit 2 dated July 23, 1991. These documents regarding the NRC staff's environmental assessment of the proposed action 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 local public document room located at Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, the 7th day of August, 1991.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–19345 Filed 8–13–91; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50-344]

Portland General Electric Co.; Trojan Nuclear Plant; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1 issued to Portland General Electric Company (the licensee) for operation of the Trojan Nuclear Plant located in Columbia County, Oregon.

The proposed amendment would revise Technical Specifications 3/4.1, and 3/4.2 of Appendix A of that license to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. In addition, the Core Operating Limits Report would be included in the Definitions Section of the Technical Specifications (TS) to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition would note that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1.7. This Specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and be consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters, nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the TS, they have been incorporated into the Core Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits, so that the possibility of a new or different kind of accident from any accident previously evaluated is not created by the change. Furthermore, since these changes are administrative in nature, they do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed revision to the TS is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and that addition of the referenced report for these limits does not create the possibility of a new or different kind of accident from those previously evaluated. They also do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 13, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Branford Price Millar Library, Portland State University, 934 SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97207. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the

Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, nothwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30–day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30–day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James E. Dyer, Project Director: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D. R. Nichols, Esquire, Trojan Nuclear Plant at 71760 Columbia River Road, Ranier, Oregon 97048, attorney for the licensee.

Nontimely filings of petitions for leave to intevene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 1, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Branford Price Millar Library, Portland State University, 934 SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 9th day of August, 1991.

For the Nuclear Regulatory Commission

Patricia L. Eng,

Project Manager, Project Directorate V, Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91–19490 Filed 8–13–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST); Panel on Science and Technology and National Security

The Panel on Science and Technology and National Security of the President's Council of Advisors on Science and Technology (PCAST) will meet on August 19–20, 1991. The meeting will begin at 9 a.m. at the Naval Ocean Systems Command in San Diego, CA.

The purpose of the Panel is to advise the Council on matters involving science and technology and national security.

Proposed Agenda

1. Briefing of the Panel on problems of national security by the Office of Science and Technology Policy and the National Security Council.

2. Briefing of the Panel on problems of national security by the Department of Defense.

All sessions will be closed to the public.

The briefings on the national security issues necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. The meeting will be closed to the public pursuant to 5 U.S.C. 522b(c)(1), (2), and (9)(B).

Dated: August 9, 1991.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91-19365 Filed 8-13-91; 8:45 am]

BILLING CODE 3170-01-M

POSTAL RATE COMMISSION

[Docket No. A91-11; Order No. 896]

Jenkins Bridge, Virginia 23399 (William H. Corbin, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued August 8, 1991.

Docket Number: A91-11.

Name of Affected Post Office: Jenkins Bridge, Virginia 23399.

Name(s) of Petitioner(s): William H. Corbin.

Type of Determination: Closing.

Date of Filing of Appeal Papers: August 1, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A));
2. Effect on postal services (39 U.S.C. 404(b)(2)(C).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 12-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before August 16, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

August 1, 1991—Filing of petition.

August 8, 1991—Notice and Order of Filing of Appeal.

August 26, 1991—Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b)).

September 5, 1991—Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)).

September 25, 1991—Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).

October 10, 1991—Petitioner's Reply Brief should petitioner choose to file one (*see* 39 CFR 3001.115(d)).

October 17, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).

November 29, 1991—Expiration of 120-day decisional schedule (*see* 39 U.S.C. sec. 404(b)(5).

[FR Doc. 91-19246 Filed 8-13-91; 8:45 am]

BILLING CODE 4710-FN-M

[Docket No. A91-12; Order No. 897]

Liberty, Nebraska 68381 (Clinton Rule, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued August 8, 1991.

Docket Number: A91-12.

Name of Affected Post Office: Liberty, Nebraska 68381.

Name(s) of Petitioner(s): Clinton Rule.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: August 5, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A));

2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before August 20, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

APPENDIX

August 5, 1991	Filing of Petition.
August 8, 1991	Notice and Order of Filing of Appeal.
August 30, 1991	Last day for filing of petitions to intervene (see 39 CFR 3001.111(b)).
September 9, 1991	Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b)).
September 30, 1991	Postal Service Answering Brief (see 39 CFR 3001.115(c)).
October 15, 1991	Petitioner's Reply Brief should petitioner choose to file one (see 39 CFR 3001.115(d)).
October 22, 1991	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
December 3, 1991	Expiration of 120-day decisional schedule (see 39 U.S.C. sec. 404(b)(5)).

[FR Doc. 91-19245 Filed 8-13-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Smart & Final, Inc.

Common Stock, $0.01 Par Value (File No. 7–7142)
Singer Company N.V.
Common Stock, $0.01 Par Value (File No. 7–7143)
General Motors Corporation
Mandatory Redeemable Preference Stock, Series A $0.10 Par Value (File No. 7–7144)
MGIC Investment Corporation
Common Stock $1.00 Par Value (File No. 7–7145)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–19261 Filed 8–13–91; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; The Continuum Company, Inc., Common Stock, $.10 Par Value (File No. 1–10151)

August 8, 1991.

The Continuum Company, Inc. (Company) has filed an application with the Securities and Exchange Commission (Commission) pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. (Amex).

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on April 5, 1991, the Company's Common Stock commenced trading on the New York Stock Exchange (NYSE). In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before August 29, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–19260 Filed 8–13–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18264; Int'l Series Release No. 303; 812–7765]

Putnam Adjustable Rate U.S. Government Fund, et al.; Application

August 8, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Putnam Adjustable Rate U.S. Government Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Manager Trust, Putnam Convertible Income-Growth Trust, Putnam Corporate Asset Trust, Putnam Daily Dividend Trust, Putnam Diversified Income Trust, Putnam Diversified Premium Income Trust, Putnam Dividend Growth Fund, Putnam Dividend Income Fund, Putnam Energy-Resources Trust, Putnam Europe Growth Fund, Putnam Federal Income Trust, Putnam Florida Tax Exempt Income Fund, Putnam Focus Growth Fund, George Putnam Fund of Boston, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Gold and Precious Metals Fund, Putnam Health Sciences Trust, Putnam High Income Convertible and Bond Fund, Putnam High Income Government Trust, Putnam High Yield Municipal Trust, Putnam High Yield Trust I, Putnam High Yield Trust II, Putnam Income Fund, Putnam Information Sciences Trust, Putnam Intermediate Government Income Trust, Putnam Investment Grade Municipal Trust, Putnam Investors Fund, Putnam Managed Municipal Income Trust, Putnam Massachusetts Tax Exempt Income Fund, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam Option Income Trust II, Putnam OTC Emerging Growth Fund, Putnam Overseas Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, The Putnam Fund for Growth & Income, Putnam Premier Income Trust, Putnam Strategic Income Trust, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free High Income Fund, Putnam Tax-Free Income Trust, Putnam Total Return Fund, Putnam U.S. Government Income Trust, Putnam Utilities Growth and Income Fund, Putnam Vector Growth Fund, Putnam Vista Fund, and Putnam Voyager Fund.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act that would grant an exemption from section 12(d)(3) of the 1940 Act and rule 12d–3.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) of the 1940 Act to permit them to invest in equity and/or convertible securities of foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross annual revenues from securities related activities in accordance with the conditions of the proposed amendments to rule 12d3–1 under the 1940 Act.

FILING DATE: The application was filed on July 31, 1991.

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 September 5, 1991, and should be accompanied by proof of service on the 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 Fifth Street, NW., Washington, DC 20549; Applicants, c/o John R. Verani, The Putnam Companies, One Post Office Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney (202) 272–7324, or Jeremy N. Rubenstein, Assistant Director (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.

Applicants' Representations

1. Applicants are management investment companies registered under the 1940 Act. They are managed by the Putnam Management Company, Inc.

2. Applicants seek to invest equity and/or convertible securities issued by foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as broker, dealer, underwriter or investment adviser ("Foreign Securities Companies").

3. Applicants seek relief from section 12(d)(3) of the 1940 Act and rule 12d3–1 thereunder to invest in securities of Foreign Securities Companies to the extent allowed in the proposed amendments to rule 12d3–1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicants' proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of proposed amended rule 12d3–1.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the 1940 Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the 1940 Act provides an exemption from section 12d(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most fiscal year from securities related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Applicants proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of rule 12d3–1 under the 1940 Act except subparagraph (b)(4) thereof, which provides that "at the time of acquisition, any equity security of the issuer (must be) a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a margin security generally must be one which is traded in United States markets, securities issued by many Foreign Securities Companies would not meet this test. Accordingly, Applicants seek an exemption from the margin security requirements of rule 12d3–1[1]

2. Proposed amended rule 12d3–1 provides that the margin security requirement would be excused if the acquiring company purchases the equity securities of Foreign Securities Companies that meet criteria comparable to those applicable to equity securities of United States securities related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree that any relief will be subject to the following condition:

1. Applicants will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19333 Filed 8–13–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System has amended Regulation T to include "foreign margin stock." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stock" under Regulation T. See 12 CFR 220.2(i) and (q)(6).

DEPARTMENT OF STATE

[Public Notice 1454]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Countertrade; Meeting

There will be a meeting of the Advisory Committee's Study Group on International Countertrade on Wednesday, August 28 from 10 a.m. until 3 p.m. at the Federal Mediation and Conciliation Service Building, 2100 K Street, NW., Washington, DC, in room 215.

The purpose of the meeting is to review progress by the United Nations Commission on International Trade Law (UNCITRAL) on preparation of a draft legal guide on countertrade contracts. The study group may also make recommendations on proposed United States positions for an UNCITRAL Working Group meeting on the draft legal guide scheduled to begin September 3.

The agenda of the Study Group will include a review of the current draft chapters of the legal guide received from the UNCITRAL Secretariat, as well as views of governments expressed at the UNCITRAL Plenary session in June 1990. The guide is expected to cover, but is not necessarily limited to, terminology, contracting methods, type, quality and quantity of goods, pricing of goods, fulfilment of countertrade commitments, participation of third parties, payment, restrictions on resale of goods, liquidated damages and penalties, security for performance, completion, choice of law and settlement of disputes.

The draft chapters of the proposed legal guide are set forth in U.N. Docs. A/CN.9/332 Adds. 1–8 and A/CN.9/WG.1V/WP.51 Adds. 1–6. Comments by governments on the first group of chapters are set forth in the Commission's Report of its 23rd Plenary Session, U.N. Doc. A/45/17. A preliminary report by the Secretariat on legal issues in international countertrade is contained in U.N. Doc. A/CN.9/302. These documents are available upon request from the office of Legal Adviser at the address below.

Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the chair. Access to the meeting room is controlled; persons wishing to attend should notify the Legal Adviser's Office at the number indicated below not later than August 26th of their name, affiliation, address and telephone number. Persons interested but unable

to attend the meeting may submit written comments or proposals to the Office of the Legal Adviser at the address indicated below.

For additional information on the meeting or to request space for attendance, please contact Harold S. Burman, Office of the Legal Adviser (L/PIL), 2100 "K" Street, suite 501, Washington, DC 20037, or send Fax requests to (202) 632–5283 or call (202) 653–9852.

Dated: August 15, 1991.

Peter H. Pfund,

Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 91–19351 Filed 8–13–91; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 2, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47571.

Date filed: July 30, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 27, 1991.

Description: Motion of Air Micronesia, Inc., for Leave to Amend its Application, pursuant to section 401 of the Act and subpart Q of the Regulations, for an amendment to its certificate of public convenience and necessity for Route 170 so as to be authorized to engage in foreign air transportation of persons, property, and mail between the coterminal points Guam and Saipan, Northern Mariana Islands, on the one hand, and coterminal points in Korea and Taiwan, on the other. Air Micronesia now moves to amend its application to include Hong Kong, Palau Islands, and Singapore along with Korea and Taiwan as coterminal points.

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 91–19723 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Hayward Air Terminal, Hayward CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Hayward Air Terminal, Hayward, California, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Hayward Air Terminal District. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Hayward Air Terminal were in compliance with applicable requirements effective February 20, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 29, 1992.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 2, 1991. The public comment period ends October 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, telephone (415) 876–2779. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Hayward Air Terminal which will be approved or disapproved on or before January 29, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Hayward Air Terminal, effective on August 2, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 29, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, room 3E24, Hawthorne, California. Mail Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009

Ms. Joan Castaneda, Airport Manager, Hayward Air Terminal, 20301 Skywest Drive, Hayward, California 94541

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 2, 1991.

Herman C. Bliss,

Manager, Airports Division, Western Pacific Region.

[FR Doc. 91-19289 Filed 8-13-91; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; North Las Vegas Air Terminal (VGT); North Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the Clark County Department of Aviation for North Las Vegas Air Terminal (VGT), North Las Vegas, Nevada, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for North Las Vegas Air Terminal were in compliance with applicable requirements effective February 6, 1990. The proposed Noise Compatibility Program will be approved or disapproved on or before January 29, 1991.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is January 29, 1992. The public comment period ends October 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone (415) 876-2779. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for North Las Vegas Air Terminal which will be approved or disapproved on or before January 29, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA formally received the Noise Compatibility Program for North Las Vegas Air Terminal, effective on August 2, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act.

Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 29, 1992. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, room 3E24, Hawthorne, California, Mail: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009

Mr. Robert N. Broadbent, Director of Aviation, Clark County Department of Aviation, 5757 Wayne Newton Boulevard, North Las Vegas, Nevada 89119

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 2, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 91-19291 Filed 8-13-91; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; Redding Municipal Airport (RDD), Redding, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the City of Redding for Redding Municipal Airport (RDD), Redding, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for Redding Municipal Airport were in compliance with applicable requirements effective July 6, 1990. The proposed Noise Compatibility Program will be approved or disapproved on or before January 29, 1992.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is August 2, 1991, The public comment period ends October 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone (415) 876-2779. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Redding Municipal Airport which will be approved or disapproved on or before January 29, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the

Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Redding Municipal Airport, effective on August 2, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 29, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, room 3E24, Hawthorne, California, Mail: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009

Mr. Doyle C. Rutt, Director of Airports, City of Redding, 760 Parkview Avenue, Redding, California 96001–3396

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 2, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 91–19290 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Dickinson County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Dickinson County, Michigan.

FOR FURTHER INFORMATION CONTACT: Thomas Fort, District Engineer, Federal Highway, 315 W. Allegan Street, room 211, Lansing, MI 48933, Telephone (517) 377–1879.

or

Mr. Jan Raad, Manager, Environmental Section; Bureau of Transportation Planning, Michigan Department of Transportation (MDOT), Transportation Bldg., 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909, Telephone (517) 373–8350.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct a six-mile long "Alternate US–2/141" bypass of the City of Iron Mountain, Dickinson County, Michigan.

The project is considered necessary to alleviate a safety hazard for pedestrians caused by a large number of logging trucks passing through Iron Mountain utilizing the lane adjacent to the curb on existing US–2/141 which has no curb side parking and narrow sidewalks.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

A public meeting was held in Iron Mountain on May 24, 1989. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

A scoping Document has been prepared to ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified. Comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA or the MDOT at the addresses above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The Regulations implementing executive order 12372 regarding intergovernmental consultation or Federal Programs and activities apply to this program.)

A. George Ostensen,

Division Administrator, Lansing, Michigan.

[FR Doc. 91–19283 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Lake and Missoula Counties, MT

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Lake and Missoula Counties, Montana.

FOR FURTHER INFORMATION CONTACT: Dale W. Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626–0056, Telephone: (406) 449–5310; or Edrie L. Vinson, Supervisor, Environmental Section, Montana Department of Transportation, 2701 Prospect Avenue, Helena, Montana 59620, Telephone: (406) 444–7632.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Montana Department of Transportation (MDOT), will prepare an environmental impact statement for a proposal to improve the U.S. Highway 93 transportation corridor from Interstate Highway 90 near Missoula, Montana to the City of Polson in Lake County, Montana.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; (3) improving alternate highway routes; (4) widening the existing highway; and (5) constructing a highway on new location.

This proposed project was originally being developed by the Montana Department of Transportation as five separate projects, designated as follows:

Project No.	Project name	From mile-post	To mile-post
F 5-2(8)6	Evaro-Dirty Corner	6.3	15.0
F 5-2(34)15	Dirty Corner-Ravalli	15.0	27.4
F 5-2(38)27	Ravalli-North	27.4	35.5
F 5-2( )36	Ronan-South	35.5	47.8
F 5-2(33)48	Ronan-Polson	47.8	59.0

Environmental assessments have been prepared for some of the segments listed above. During this process, it was determined that a single EIS should be prepared.

Copies of this notice are being sent to and comments are being solicited from appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

A series of public meetings will be held in the project area and, in addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the MDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 8, 1991.

David C. Miller,

Planning and Program Development Engineer, Montana Division, Helena.

[FR Doc. 91-19284 Filed 8-13-91; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Docket No. P-91-2W; Notice 2]

Transportation of Natural and Other Gas by Pipeline, Grant of Waiver; ANR Pipeline Co.

ANR Pipeline Company (ANR) petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 192.611(c), which requires confirmation or revision of the maximum allowable operating pressure (MAOP) within 18 months of a change in class location. ANR determined that, effective June 14, 1990, the class location for the 22-inch Southwest Mainline and 30-inch Southwest Mainline Loop between mileposts 883.35 and 884.55, Porter County, Indiana, changed from class Location 2 to Class Location 3. Such class location change determination was made pursuant to a study required by § 192.609 due to an increase in population density. Absent a waiver, ANR would be required, on December 14, 1991, to either (1) reduce MAOP on the lines from 850 psig to 709 psig and 715 psig for the 22-inch and 30-inch lines, respectively, or (2) replace the lines with pipe designed and constructed requirement for a 10½ month period ending November 1, 1992.

The waiver would allow ANR to maintain throughput pending replacement of both the 22-inch and 30-inch pipelines concurrent with the installation of a new 42-inch Second Mainline loop of the same segment of their pipeline system. ANR filed a certificate application with the Federal Energy Regulatory Commission (FERC) on March 21, 1991, seeking approval to construct the Second Mainline Loop (Docket No. CP91-1616). ANR estimates construction of the three pipelines should be complete by November 1, 1992, assuming timely receipt of FERC approval. Further, ANR states that, without the waiver, they must complete construction replacement of the two existing lines in September 1991 to avoid disruption of service to customers.

In response to the petition, and the justification contained therein, RSPA issued a Notice of Petition for Waiver inviting interested parties to comment (Notice 1) (56 FR 30412; July 2, 1991). In that notice, RSPA explained why granting a waiver from 49 CFR 192.611(c) for a 10½ month period to allow the operator sufficient time to install new pipelines in a single construction period would not affect safety.

Comments were received from two pipeline operators. Each operator endorsed the petition and recommended granting the waiver.

In accordance with the foregoing, RSPA, by this order, finds that compliance with § 192.611(c) is unnecessary for the reasons stated in the Notice of Petition for Waiver (56 FR 30412; July 2, 1991), and that the requested waiver would not be inconsistent with pipeline safety. Accordingly ANR Pipeline Company's petition for waiver from compliance with § 192.611(c) is granted for the period beginning December 14, 1991, and ending November 1, 1992.

Issued in Washington, DC on August 8, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-19296 Filed 8-13-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 8, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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.

Financial Management Service

OMB Number: 1510-0012.

Form Number: TFS 6314.

Type of Review: Extension.

Title: Annual and Quarterly Financial Statements of Surety Companies—Schedule F.

Description: Information obtained is used to compute amount of unauthorized reinsurance in determining Treasury Certified companies' underwriting limitations which are published in Treasury Circular 570 for use by Federal Bond approving officers.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 306.

Estimated Burden Hours Per Response: 48 hours, 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 14,912 hours.

Clearance Officer: Jacqueline R. Perry, (301) 436-6453, Financial Management Service, room B-101, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–19275 Filed 8–13–91; 8:45 am]

BILLING CODE 4810–35–M

Customs Service

[T.D. 91–70]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on July 30, 1991, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and § 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following broker licenses due to the failure of the broker to file the triennial report as required by 19 CFR 111.30(d). Hence, the subject licenses are revoked. These licenses were issued in the Baltimore District. The list of affected brokers is as follows:

Customs Broker and License No.

Virginia E. Bloom....7250
Mary Brill....5347
Sanford J. Disney....2842
Dina M. Duckett....10955
Henry L. Hurst....10332
Walter E. Lee....4102
William N. McGill....2180
Franklyn T. Michael....4227
Dana Parker....10986
W. Gordon Plock....1015
Marian Roem....7434
Thomas M. Sullivan....11160
Ronald O. Thompson....10958
Jesse York....1326

Dated: August 7, 1991.

William J. Luebkert,

Acting Director, Office of Trade Operations.

[FR Doc. 91–19305 Filed 8–13–91; 8:45 am]

BILLING CODE 4820–02–M

Office of Thrift Supervision

Coral Coast Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Coral Coast Federal Savings Bank, Boynton Beach, Florida, on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19309 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Standard Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Standard Federal Savings and Loan Association, Columbia, South Carolina, on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19310 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Coral Coast Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Coral Coast Savings Bank, FSB, Boynton Beach, Florida, OTS No. 8263, on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19307 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

First Northern Co-operative Bank, A Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Northern Co-operative Bank, A Federal Savings Bank, Keene, New Hampshire (Association), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19311 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

George Washington Federal Savings Association, Johnson City, Tennessee; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for George Washington Federal Savings Association, Johnson City, Tennessee (Association), with the Resolution Trust Corporation as sole Receiver for the Association on July 5, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19315 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Mercer Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Mercer Federal Savings Bank, Trenton, New Jersey (Association), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19312 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Standard Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Standard Federal Savings Bank, Columbia, South Carolina, OTS No. 0006 on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19308 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Texasbanc, Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Texasbanc, Federal Savings Bank, Conroe, Texas (Association), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19313 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Trident Federal Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Trident Federal Savings and Loan Association, F.A., Newark, New Jersey (Association), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 8, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–19314 Filed 8–13–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 157
Wednesday, August 14, 1991

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).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m. Tuesday, August 20, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. Approval of Board Minutes
   B. District Bank Directorate
   C. Housing Finance Directorate
2. Community Support Regulations Issues

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Dividend Policy
2. Office of Finance Study
3. Examination Report

The above matters are exempt under one or more of sections 552 (c)(2), (2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–19419 Filed 8–9–91; 4:23 p.m.]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m. Wednesday, August 21, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. Legislative/Strategic Plan Discussion
2. Pension Portability Plan
3. FHLBank Chairmen Responses to Wyatt Study

The above matters are exempt under one or more of sections 552 (c)(2), (2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–19420 Filed 8–9–91; 4:30 pm]

BILLING CODE 6725–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Thursday, August 22, 1991.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: The first matter to be considered, the 1992 research agenda, will be open to the public. The second matter, internal personnel rules and practices, will be closed under Exemption 2 of the Government in the Sunshine Act. The third matter, *Special Counsel* v. *Narcisse,* HQ1216910013, will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: Discussion of the 1992 research agenda of the Office of Policy and Evaluation, internal personnel rules and practices, and *Special Counsel* v. *Narcisse,* HQ1216910013.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Michael Hoxie, Director, Information Services Division, (202) 653–7200.

Dated: August 2, 1991.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 91–19478 Filed 8–12–91; 12:34 pm]

BILLING CODE 7400–01–M

Corrections

Federal Register
Vol. 56, No. 157
Wednesday, August 14, 1991

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 COMMERCE

International Trade Administration

University of Arizona, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

Correction

In notice document 91-18625 appearing on page 37343 in the issue of Tuesday, August 6, 1991, in the second column, in the last full paragraph, in the last line "*Date:* 1991." should read "*Date:* March 27, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0170]

W.R. Grace, Ltd.; Filing of Food Additive Petition

Correction

In notice document 91-16926 appearing on page 32435, in the issue of Tuesday, July 16, 1991, make the following corrections:

1. In the **SUMMARY:**

a. In the sixth line,"styrene-T3n-" should read "styrene-*n*-".

b. In the tenth line, "polythylene" should read "polyethylene".

2. In the **SUPPLEMENTARY INFORMATION:**

a. In the ninth line,"§ 175.000" should read "§ 175.300".

b. In the 14th line, "benzisothiazolin" should read "benzisothiozolin".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling SSR 91-5p]

Titles II and XIV: Mental Incapacity and Good Cause for Missing the Deadline To Request Review

Correction

In notice document 91-15881 beginning on page 29971 in the issue of Monday, July 1, 1991, make the following corrections:

On page 29971:

1. In the second column, in the third full paragraph, in the fifth line "Special" was misspelled.

2. In the third column, in the sixth line from the bottom "Appeal's Council's" should read "Appeals Council's".

3. In the same column, in the fifth line from the bottom "or" should read "of".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 575

RIN 3206-AE21

Aggregate Limitation on Pay; Advances in Pay; Recruitment and Relocation Bonuses; and Retention Allowances

Correction

In rule document 91-7263 beginning on page 12833 in the issue of Thursday, March 28, 1991, make the following corrections:

§ 550.203 [Corrected]

On page 12837, in the second column, in § 550.203(c), in the first line, insert "may" after "pay".

§ 575.304 [Corrected]

On page 12842, in the second column, in § 575.304(a), in the fifth line, insert "or" after "payment".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-90-07]

Regulated Navigation Area: San Diego Bay, CA

Correction

In rule document 91-8506, beginning on page 14644, in the issue of Thursday, April 11, 1991, make the following correction:

§ 165.1108 [Corrected]

On page 14645, in the first column, in § 165.1108(a), the fifth line is corrected to read as follows:

32°41'–34.2" N 117°–13'–58.5" W

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 90-125]

Anchorage Grounds; Coast Guard COTP Providence, RI Zone; Buzzards Bay

Correction

In rule document 91-11544, beginning on page 22643, in the issue of Thursday, May 16, 1991, make the following correction:

§ 110.140 [Corrected]

On page 22644, in the third column, in § 110.140(b)(3), the fourth line is corrected to read as follows:

"34–44N/70–42–42W to 41–35–16N/70–43–"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-27]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

Correction

In notice document 91-16824, beginning on page 32464, in the issue of Tuesday, July 16, 1991, make the following corrections:

On page 32464, in the second column, under "Petitions for Exemption", the first "Docket No." should read, "25624", and in the same column, under "Docket No. 26557", the "Sections of the FAR Affected:" should read, "14 CFR 141.65"

BILLING CODE 1505-01-D

federal register

Wednesday
August 14, 1991

Part II

Department of Transportation

Coast Guard

46 CFR Part 28

Commercial Fishing Industry Vessel Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88-079]

RIN 2115-AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations for U.S. documented or state numbers uninspected fishing, fish processing, and fish tender vessels to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. These regulations are intended to improve the overall safety of commercial fishing industry vessels.

DATES: This final rule is effective on September 15, 1991. In §§ 28.110, 28.115, 28.120, 28.135, 28.145, 28.150, 28.210, and 28.270, vessel operators have been given delayed implementation dates. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 15, 1991.

ADDRESSES: The materials referenced in this final rule are on file with the Executive Secretary, Marine Safety Council, U.S. Coast Guard, room 3406, 2100 Second Street, SW., Washington, DC 20593-0001.

A Regulatory Evaluation has been placed in the public docket for this rulemaking, and may be inspected and copied at the address listed above.

FOR FURTHER INFORMATION CONTACT: Commander Mike Rosecrans, Office of Marine Safety, Security and Environmental Protection (G-MTH-4/13), room 1304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2960.

SUPPLEMENTARY INFORMATION:

These regulations apply to all U.S. commercial fishing industry vessels, whether existing before, or built or altered after September 15, 1991, and provide requirements for their equipment, design, and operations. Additional equipment is required for documented vessels that operate beyond the Boundary Lines or that operate with more than 16 individuals on board. Design and construction requirements that apply to vessels built after or which undergo a major conversion completed after September 15, 1991, are also included, if those vessels operate with more than 16 individuals on board. Additionally, casualty and injury reporting requirements are included that apply to all underwriters of primary insurance for commercial fishing industry vessels, owners of commercial fishing industry vessels, and all employees injured on such vessels.

Public Hearings and Meetings

Thirteen public hearings were held to receive comments on the proposed rules. The public hearings were held in the Alaska, the Gulf Coast, the East Coast, and the West Coast regions. These meetings were announced in a **Federal Register** notice (55 FR 24131) on June 14, 1990.

A public meeting, announced in a **Federal Register** notice on September 15, 1989 (54 FR 38316), concerning implementation of the Commercial Fishing Industry Vessel Safety Act of 1988 ("the Act") was held at the offices of the American Institute of Marine Underwriters in New York, NY, on October 12, 1989. This meeting gave the insurance industry an opportunity to present their views on the proposed requirements related to casualty data collection and development of the regulations concerning collection of casualty information required by the Act.

Drafting Information

Several offices at Coast Guard Headquarters contributed to drafting this final rule, but the principal authors are Commander Mike Rosecrans, Office of Marine Safety, Security and Environmental Protection and Lieutenant Commander Don Wrye, Office of Chief Counsel.

Background and Regulatory History

Commercial Fishing Industry Vessel Safety Act of 1988

On September 9, 1988, title 46 United States Code, was amended in chapter 45 (Uninspected Commercial Fishing Industry Vessels, sections 4501 through 4508) by the Commercial Fishing Industry Vessel Safety Act of 1988, Public Law 100-424 ("the Act"). This chapter, as amended, is applicable to all U.S. uninspected commercial fishing vessels, fish processing vessels, and fish tender vessels, except fish processing vessels of more than 5000 gross tons and fish tender vessels of more than 500 gross tons since they are subject to inspection under 46 U.S.C. 3301 (11) and (12). Also, it does not apply to vessels engaged solely in sport fishing that are subject to inspection under 46 U.S.C. 3301(8) as small passenger vessels and are regulated under 46 CFR subchapter T, or to vessels carrying 6 or less passengers which operate as uninspected passenger vessels regulated under 46 CFR subchapter C. Vessels that alternate between commercial and sport fishing must comply with the requirements for the service in which they are engaged.

The Act requires the Secretary of Transportation to prescribe regulations for certain safety equipment and vessel operating procedures. The Act also requires the reporting of casualties to commercial fishing industry vessels by insurers, reporting of injuries by seamen on board commercial fishing industry vessels, and collection of casualty information by the Secretary.

The Act calls for regulations concerning the following equipment:

1. For all vessels. The regulations developed for this class of vessels should concern:

(a) Fire extinguishing equipment.

(b) Life preservers.

(c) Backfire flame arrestors for gasoline engines.

(d) Ventilation of enclosed spaces.

(e) Visual distress signals.

(f) Buoyant apparatus.

(g) Alerting and locating equipment, including emergency position indicating radio beacons (EPIRBs.)

(h) Placards informing seamen of the duty to report injuries.

2. For vessels which are documented and operate beyond the Boundary Lines described in 46 CFR part 7 or are documented and operate with more than 16 individuals on board. The regulations developed for this class of vessels should also concern:

(a) Alerting and locating equipment including, EPIRBs.

(b) Lifeboats or liferafts.

(c) An immersion suit for each individual on board.

(d) Radio communication equipment.

(e) Navigation equipment including compasses, radar reflectors, nautical charts, and anchors.

(f) First aid equipment.

(g) Any other equipment required to minimize the risk of injury.

3. For vessels which are built after, or which undergo a major conversion completed after, the effective date of the regulations and operate with more than 16 individuals on board. The regulations developed for this class of vessels should also concern:

(a) Navigation equipment, including radars and fathometers.

(b) Life saving equipment, immersion suits, signaling devices, bilge alarms, bilge pumps, life rails and grab rails.

(c) Fire protection and firefighting equipment.

(d) Use and installation of insulation material.

(e) Storage of flammable and combustible material.

(f) Fuel, ventilation, and electrical equipment.

The Act also addresses a major operational problem encountered by commercial fishing industry vessels by requiring regulations for operational stability. The Act states that those regulations are to apply to all vessels which are built, or which are substantially altered in a manner that affects operational stability, after December 31, 1990.

The Act requires that in the regulations the Coast Guard—

(1) Consider the specialized nature and economics of the operations and the character, design, and construction of commercial fishing industry vessels; and

(2) Not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulations.

Concern for the size and complexity of fish processing vessels is recognized by the Act. All fish processing vessels are to be inspected at least once every two years to ensure compliance with the regulations developed in response to the Act. Further, fish processing vessels which are built after or which undergo a major conversion completed after July 27, 1990, must meet the survey requirements of and be classed by the American Bureau of Shipping or another similarly qualified organization accepted by the Coast Guard for that purpose.

Commercial Fishing Industry Vessel Advisory Committee

The Act requires formation of a 17 member Commercial Fishing Industry Vessel Advisory Committee ("the Committee"). The Executive Secretary of the Committee is appointed by the Secretary of Transportation, and the Federal Advisory Committee Act (5 U.S.C. app. 1 *et seq.*) applies to the Committee. The Committee terminates on September 30, 1992. A solicitation for membership on the Committee was published in the **Federal Register** on September 23, 1988 (53 FR 37075). That solicitation also explained the constituency of the Committee.

The Committee has met three times to discuss implementation of the Act and development of the subsequent regulations. The meetings were held twice in Washington, DC and once in Seattle, WA. Announcements of these meetings appeared in the **Federal Register** on March 13, 1989 (53 FR 10473), March 24, 1989 (53 FR 12307), June 6, 1989 (53 FR 24071), and September 27, 1989 (53 FR 39621).

The Committee has discussed a myriad of topics dealing with implementing the Act including several drafts leading to a Notice of Proposed Rulemaking (NPRM) and this final rule. The basic form of the regulations resulted from Committee recommendations. To a large extent the content and the level of detail of the final rule is based upon comments generated by the Committee in response to general discussions at the aforementioned meetings.

During the first meeting of the Committee, a Chairman and Vice Chairman were chosen and lots were drawn to determine the term of each member. A normal term is three years; however, in order to stagger members' terms, 6 member's terms are for one year, 6 member's terms are for two years, and 5 member's terms are for the full three years. Members whose terms have expired may be reappointed. Subsequent appointments will be for three years or until termination of the Committee. As previously mentioned, the Act provides for termination of the Committee on September 30, 1992, unless extended. The Chairman of the Committee has recommended to Congress that a five year extension of the Committee be authorized citing the significant efforts needed to ensure smooth implementation of the Act, the pending study of safety problems by the National Academy of Engineering, and the Coast Guard's plan for licensing operators of documented commercial fishing industry vessels which was recently submitted to Congress as required by the Act.

Aleutian Trade Act of 1990

On November 16, 1990, the President signed Pub. L. 101–595, The Aleutian Trade Act of 1990 (the ATA.) The ATA provides for continued cargo service to remote communities in Alaska while ensuring better safety standards for fish tender vessels operating in the Aleutian trade. "Aleutian trade" is defined as "the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska west of 153° West longitude and east of 172° East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska)."

The ATA amends certain provisions of the Commercial Fishing Industry Vessel Safety Act of 1988 to require fish tender vessels to be subject to the provisions of section 4502(b) of the Act the same as documented vessels which operate beyond the Boundary Lines or that operate with more than 16 individuals on board. Section 4502(c) of the Act is also amended to include fish tender vessels in the Aleutian trade with those which are built after or which undergo a major conversion completed after December 31, 1988, and which operate with more than 16 individuals on board. Fish tender vessels engaged in the Aleutian trade would also be subject to the revisions of section 4502(f) of the Act which requires that they be examined at least once every 2 years for compliance with 46 U.S.C. chapter 45 and the implementing regulations.

Regulations implementing provisions of the ATA are expected to be included in the Supplemental Notice of Proposed Rulemaking (SNPRM) discussed below. Further discussion of the ATA is expected to be included in the preamble to the SNPRM.

Certain provisions of the ATA are applicable regardless of the status of the regulations. In particular, the ATA modifies 46 U.S.C. 3302(c) to exempt a fishing, fish tender, or fish processing vessel in the Aleutian trade from consideration as an inspected vessel if the vessel:

1. Is not more than 500 gross tons;

2. Has an incline test performed by a marine surveyor; and

3. Has written stability institutions posted on board the vessel.

This change to 46 U.S.C. is effective on May 16, 1990. The regulations in subpart E of this final rule are considered appropriate for vessels in the Aleutian trade and may be used as guidance until regulations are finalized to implement this portion of the ATA.

Advance Notice of Proposed Rulemaking

An Advance Notice of Proposed Rulemaking (ANPRM) was published in the **Federal Register** on December 29, 1988 (53 FR 52735), addressing potential requirements for uninspected fishing, fish processing, and fish tender vessels. In response to that ANPRM nearly 200 comment letters were received. Each of the comment letters has been considered in developing the Notice of Proposed Rulemaking (NPRM) that was published in the **Federal Register** on April 19, 1990 (55 FR 14924).

Supplemental Notice of Proposed Rulemaking

A notice of intent to publish a Supplemental Notice of Proposed Rulemaking (SNPRM) appeared in the **Federal Register** (55 FR 35694) on August 30, 1990. An SNPRM is being developed to address:

(1) Stability for fishing vessels less than 79 feet in length,

(2) Requirements for survival craft on fishing vessels operating inside or near the Boundary Line with fewer than four individuals on board, and

(3) Administration of exemptions authorized by 46 U.S.C. 4506 in relationship to high vessel density and limited duration fisheries.

Separation of these topics from this rulemaking is a result of comments presented at the public hearings. The major concern expressed was the application of the International Maritime Organization stability standards to vessels less than 79 feet in length. The Coast Guard is currently conducting research into the stability of these smaller, but more prevalent, vessels. The Consultation with many naval architects experienced in the design and stability characteristics of fishing industry vessels continues. Most notable among contacts is an ad hoc group based in Seattle, WA, calling themselves "Naval Architects for Fishing Vessel Safety." They submitted numerous calculations and examples to explain their arguments that the criteria in the NPRM for vessels less than 79 feet in length was too severe. In their statements at the public hearing in Seattle, WA on the NPRM, they asked that the comment period for the NPRM be extended to allow additional study on the topic of stability of fishing industry vessels less than 79 feet in length, especially the manner in which any stability criteria compares to proven seaworthy designs.

As a consequence of their comments and others received at other public hearings, the Coast Guard decided to separate the three areas listed above from this final rule. In this way all final rules would not be delayed, yet the topics which generated the most public concern could be adequately addressed.

Effective Date of Regulations

The effective date of the final rule is September 15, 1991. The Coast Guard anticipates that these rules will have a major beneficial impact on safety in the commercial fishing industry, and has chosen an effective date which is slightly longer than the 30 day minimum for non-emergency rulemakings. There are delayed implementation dates for some survival equipment to allow manufacturers to prepare for increased demand without compromising safety. The final rule has taken this into consideration in §§ 28.110, 28.115, 28.120, 28.135, 28.145, 28.150, 28.210, and 28.270.

Units of Measure

It is recognized that English units of measure are still the preferred unit used in this country; however, in keeping with the trend to convert to international units, they are also used in this rulemaking. The exception to this is the use of nautical mile, which is universally used in the maritime industry and the units used in this preamble which are in English units only.

Discussion of Comments and Changes

In response to the NPRM nearly 500 comment letters were submitted. Some of these were very detailed in the comments and suggestions, while others consisted of form letters showing simply opposition or support on a section by section basis without detailed comments or suggestions. Due to the large number and repetitiveness of many of the comments, each one will not be addressed here. Each comment letter, as well as each oral presentation made at the 13 public hearings, has been considered in development of these final rules.

Subpart A—General Provisions

This subpart applies to all commercial fishing industry vessels and contains the definitions of terms used in part 28, except for definitions that relate to the stability requirements in subpart E, reporting requirements for casualties and injuries, and other administrative provisions. The rules in this subpart are applicable to all vessels, vessel owners, underwriters of primary insurance, and seamen employed on commercial fishing industry vessels.

Section 28.40 Incorporation by Reference

This section lists the industry standards that are incorporated by reference and the corresponding sections where each standard is referenced as the governing requirement.

In the interest of keeping the regulations as uncomplicated as possible, the number of standards incorporated by reference has been minimized. Instead, performance type standards have been used extensively. There were no significant comments submitted which addressed these standards; however, some minor corrections have been made.

In November, 1989, the International Maritime Organization (IMO) published Resolution A.658(16) "Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances." This has been incorporated into this final rule. It supersedes Maritime Safety Committee (MSC) Circular 513 "Guidelines Concerning the Use and Fitting of Retro-reflective Materials in Life-Saving Appliances" which was listed in the NPRM, but contains the identical information.

American Boat and Yacht Council (ABYC) Project H-32-1987, "Ventilation of Boats Using Diesel Fuel" has been changed to H-2-1989 "Ventilation of Boats Using Gasoline" in § 28.335, which deals with ventilation of spaces containing gasoline. Project H-2 is considered to be a more appropriate standard for spaces containing gasoline and is very similar in content to Project H-32. Project H-2 will add ventilation requirements not included in Project H-32. Project H-32 did not address the need to ventilate spaces which could contain gasoline vapors, a known explosion hazard. Additionally, Project H-33-1984, "Diesel Fuel Systems," has been changed to H-33-1989. This updating from the 1984 version to the 1989 version will not change the requirements markedly. The 1984 version of this standard can no longer be obtained since it has been superseded by the 1989 version.

Underwriters Laboratories standard 710-1984, "Exhaust Hoods for Commercial Cooking Equipment" has also been updated to the 1990 version, which is now entitled "Exhaust Hoods for Commercial Cooking Equipment." Standard 710-1990 differs from the earlier 1984 version in technical areas affecting only the manufacturers.

The American Society for Testing and Materials (ASTM) has recently published standard F 1321 "Standard Guide for Conducting a Stability Test (Inclining and Lightweight Survey) to determine the Lightship Displacement and Centers of Gravity of a Vessel." This standard has not been incorporated here, but is expected to be proposed for incorporation by reference in the SNPRM to supplement the information in §§ 28.535 and 170.185.

The National Fire Protection Association Standard 70 (also known as ANSI/NFPA 70) has recently been updated and republished as NFPA 70-1990. The NPRM proposed NFPA 70-1984. This rule incorporates the new edition, NFPA 70-1990, since earlier editions can no longer be obtained. There are no substantial differences between the two versions of NFPA 70 in the sections referenced, 310-13, 310-15, and 250-95. Section 28.040 of the NPRM incorrectly omitted reference to § 28.370 which refers to NFPA 70. This omission has been corrected in this final rule.

Section 28.50 Definition of Terms Used in This Part

This section has been modified to include additional requirements for "North Pacific Area." The NPRM referenced 50 CFR 210.1 for this definition. Rather than reference another regulation the definition has been included here for both clarity and convenience by both the industry and the Coast Guard enforcement officials.

The definitions of "accepted organization" and "similarly qualified organization" have been simplified to refer to two new sections, §§ 28.073 and 28.076, which describe the criteria for designation as one of the organizations. The criteria in these sections are similar to the definitions in the NPRM.

Section 28.73 Accepted Organizations

This section has been added to clarify that organizations must request in writing designation as an accepted organization and the criteria under which those requests will be evaluated. See also the discussion under § 28.050.

Section 28.76 Similarly Qualified Organizations

This section has been added to clarify that organizations must request in writing designation as a similarly qualified organization and the criteria under which those requests will be evaluated. See also the discussion under § 28.050.

Section 28.80 Report of Casualty

This section has been slightly modified based upon comments received in response to the NPRM, including those from the Marine Index Bureau. The Coast Guard published a notice in the **Federal Register** (55 FR 21477) on May 24, 1990, accepting the Marine Index Bureau as an organization authorized to receive and process commercial fishing industry vessel casualty data.

Weather conditions must be included in a report of casualty only if the weather caused or contributed to the casualty. The NPRM had indicated that weather conditions were to be reported for every casualty.

Information concerning fishing license numbers and type of fishing gear in use at the time of a casualty is not needed for statistical or enforcement purposes and these provisions have been removed from the listing of required information in the final rule.

The proposed requirement for a report of a casualty to include the seaworthiness of the vessel after a casualty has been removed from the final rule, since this information can be derived from the other information reported.

If the casualty is required to be reported to a Coast Guard Marine Safety or Marine Inspection Office on Form CG 2692, in accordance with 46 CFR part 4, a separate report to the Coast Guard is not required from the owner, agent, operator, master, or individual in charge to comply with the requirements of this section. However, that casualty would also be reported to the Marine Index Bureau by the underwriter of primary insurance under the provisions of paragraph (b).

Currently, 46 CFR 4.05–1 requires the following casualties to be reported to the nearest Coast Guard Marine Safety or Marine Inspection Office as soon as possible after the casualty:

(1) All accidental groundings and any intentional grounding which meets any of the other criteria listed below or which causes a hazard to navigation, the environment, or the safety of the vessel.

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel.

(3) An occurrence which materially and adversely affects the vessel's seaworthiness or fitness for service or route.

(4) Loss of life.

(5) Injury which requires professional medical treatment beyond first aid and, in the case of an individual engaged or employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties.

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000.

The owner, agent, operator, master, or individual in charge of the vessel is required to report the casualty to the underwriter of primary insurance for the vessel or to the Marine Index Bureau. The underwriter of primary insurance is required to report each casualty to the Marine Index Bureau within 90 days of receiving notice of the casualty and whenever it pays a claim resulting from a casualty. Information furnished by underwriters of primary insurance to comply with the provisions of this section is exempt from disclosure under the Freedom of Information Act because it is commercial and financial information which, if disclosed, would be likely to cause substantial harm to the competitive position of the underwriter. The Coast Guard intends to treat such information as exempt from disclosure. However, compiled information that does not contain information that is likely to cause harm to the competitive position of underwriters of primary insurance will be releasable.

Section 28.90 Report of Injury

This section requires each individual, when in the service of a commercial fishing industry vessel, to report every injury or illness to the master, individual in charge of the vessel, or other agent of the employer within seven days of the injury or illness. The purpose of this provision is to ensure that the employer, or his representative on board the vessel, is aware of all injuries and is provided with an opportunity to correct an unsafe or dangerous condition.

Subpart B—Requirements for all Vessels

This subpart contains regulations which apply to every commercial fishing industry vessel in response to section 4502(a) of the Act. The requirements of this subpart are in addition to the remainder of the requirements of 46 CFR subchapter C, which also apply to commercial fishing industry vessels. A statement to that effect has been added to § 28.100 for clarity.

Section 28.105 Lifesaving Equipment—General Requirements

This section simply restates the existing requirement that life preservers, immersion suits, and other lifesaving equipment required in 46 CFR part 25, subpart 25.25 be carried on board commercial fishing industry vessels. This is in addition to the requirements in this subpart.

The Coast Guard considered requiring work vests (Type V personal flotation devices approved under 46 CFR 160.053) for those individuals working on the open deck of commercial fishing industry vessels. The Committee recommended that work vests not be required because work vests are bulky and interfere with the normal work of personnel on the decks of commercial fishing industry vessels. In some evolutions on commercial fishing industry vessels wearing a work vest may actually add to the hazards since the work vests can be snagged by nets being paid out and increase the likelihood of individuals entering the water accidently. For these reasons work vests are not worn by most commercial fishing industry individuals. The Coast Guard agreed with the Committee recommendation and no work vests are required in this final rule. The Coast Guard does support the voluntary use of work vests, whether approved or not, when such use will not create an added safety hazard.

Section 28.110 Life Preservers or Other Personal Flotation Devices

In addition to the requirements of 46 CFR part 25, subpart 25.25, this section requires installation of life preservers, immersion suits, and other personal flotation devices (PFDs) on certain vessels. Equipment which is in addition to that already required under 46 CFR part 25, subpart 25.25, is required to be on board after November 15, 1991, as explained below.

Specific comments were requested from equipment manufacturers on their ability to meet an increased demand for the life preservers, immersion suits, and the other personal lifesaving devices in the NPRM. Several of these manufacturers indicated that there would be a problem with adequate supply of personal lifesaving equipment as a result of this rulemaking. Manufacturers are generally not willing to increase stocks of equipment in anticipation of changes in regulations.

The reason for this is that the regulatory process has inherent uncertainties including delayed rulemaking, requirements which differ between the NPRM and the final rule, grandfathering provisions, and delayed implementation dates, none of which are known until publication of the final rule. This uncertainty can place manufacturers at economic risk if they produce products in anticipation of a final rule that are not required by the final rule. In other words, the regulations create a demand and there is no supply until that demand is created. For this reason a delayed implementation for PFDs, ring life buoys, and distress signals has been included in this rulemaking. The delay is for approximately 3 months after publication of these rules in the Federal Register, which corresponds to November 15, 1991.

Paragraph (b) has been added to this rule to amplify the intent of 46 CFR part 25, subpart 25.25 and section 4502(b) of the Act. The intent of these sections is to have the required wearable PFDs so located on board the vessel that in an emergency, such as the rapid sinking of the Aleutian Enterprise, individuals on board do not have to search throughout the vessel to find a PFD. In some instances this will require that immersion suits or other wearable PFDs be provided in duplicate for some individuals such as those whose normal work station is not near their berthing area, where may wearable PFDs are typically stowed. This may be the case on larger fish processing vessels for processor workers, engineering department personnel, or deck watchstanders. This requirement is considered to simply be a reiteration of the requirement of 46 CFR part 25, subpart 25.25, as referenced in paragraph (a) of this section. Section 4502(b)(3) of the Act calls for regulation which require "at least one readily accessible immersion suit for each individual on board * * *."

Section 28.110 also requires that each documented vessel that operates on the Great Lakes or on waters seaward of the Boundary Lines, except those that operate between 32° N. and 32° S. latitude, carry at least one immersion suit or exposure suit of the proper size for each individual on board. At least one immersion suit or exposure suit is also required for individuals on board a vessel that operates on cold waters on either coastal waters or more exposed routes. Present regulations for freight vessels and tank vessels, in which exposure suits are required, establish exemption lines at 35° N. and 35° S. worldwide, except in the Atlantic Ocean, where the lines are 32° N. and 32° S. Since the winter water temperatures in the Pacific Ocean near the coastline of the U.S. are colder than in the Atlantic Ocean at the same time of the year, 32° N. and 32° S. exemption lines are established for commercial fishing industry vessels. The expected water temperature at 32° N. is at least 59 °F. at all times during the year in the coastal areas of North America. Reference to the "high seas" in the NPRM has been deleted for simplicity. This is not expected to affect safety.

The immersion suits are required to be of the proper size for each individual on board. Until recently, the Coast Guard approved three sizes of immersion suits. These sizes are: "Child/small adult" for individuals between 20 kg (196 Newtons or 44 lb.) and 50 kg (490 Newtons or 110 lb.), "adult" for individuals between 50 kg (490 Newtons or 110 lb.) and 150 kg (1471 Newtons or 330 lb.), and "oversize adult" for individuals over 150 kg (1471 Newtons or 330 lb.). These size classes were originally intended for large inspected vessels, where the "adult" suit would be adequate, if not well fitting, for almost every individual on board. The "child/small adult" and "adult oversize" suits are available for the few individuals outside the normal adult suit size range. This sizing philosophy allows for suits to be stowed on the vessel without being assigned to any one particular individual.

The Coast Guard recently approved intermediate sizes of immersion suits as being equivalent to the "adult" size when they are assigned to an individual.

Many comments submitted in response to the NPRM and at the public hearings revealed that the layout of table 28.110 in the NPRM was confusing The table has been rearranged to alleviate the confusion. The primary entry criteria for each table should be the waters on which the vessel is to be operated. This is necessary to comply with the intent of the Act which requires immersion or exposure suits for certain waters. The Coast Guard believes that immersion suits are of critical importance in cold waters where hypothermia can cause death in a matter of only minutes. The immersion suits provide a measure of thermal resistance to temperatures to allow enough time for rescuers to reach individuals in the water. Therefore, they are required equipment for all vessels in cold waters, except well sheltered waters such as rivers as allowed by the definition of "coastal waters" in § 28.050. In other waters, the type of PFDs required is dependent upon vessel length to remain consistent with the current requirements for uninspected vessels.

Some comments correctly indicated that there are currently no approved immersion or exposure suits for individuals under 44 pounds. As indicated in the NPRM, the Coast Guard has requested that immersion suit manufacturers consider development of performance standards and design guidelines for immersion suits suitable for individuals weighing less than 20 kg (196 Newtons or 44 lb.), which might be appropriate for children. To date there are still no approved immersion suits suitably sized for an individual weighing less than 44 pounds (196 Newtons).

This is a particular problem in the north Pacific area where there are a large number of family operations. In these operations, the entire family, including young children, participate in the fishing activities. These children could not legally participate, as proposed in the NPRM, since there would have to be an approved, appropriately sized immersion suit for each individual on board, yet there is no immersion suit approved which is of an appropriate size.

As a consequence, provisions have been added to table 28.110 to allow substitution, for the next four years, of another type of PFD for individuals under 44 pounds (196 Newtons) where an immersion or exposure suit is required. This period should allow interested manufacturers time to design and obtain approval of those size immersion suits.

One comment pointed out that manned barges employed in commercial fisheries were exempt from the PFD requirements as proposed. The wording of § 28.110(a) has been revised to ensure that this type of vessel is included in the final rule.

Section 28.115 Ring Life Buoys

This section expands the requirement for ring life buoys set forth in 46 CFR subpart 25.25 for vessels of more than 65 feet (19.8 meters) in length by requiring 2 additional ring life buoys. Currently, 46 CFR part 25, subpart 25.25 requires only one ring life buoy for a vessel of more than 26 feet (7.9 meters) in length. The purpose of this rule is to ensure that there are sufficient ring life buoys on board so that at least one is readily available at various points on the vessel.

Working on an open deck in a harsh environment, such as is done on board commercial fishing industry vessels, is hazardous, especially in light of the large openings in railings and bulwarks that are necessary for setting and retrieving fishing gear. Ring life buoys, conveniently located on deck, could be crucial in aiding an individual that has fallen or been washed overboard.

Several comments indicated that the NPRM would require owners of vessels between 26–65 feet (7.9–19.87 meters) in length to purchase a 24 inch (0.61 meters) ring life buoy to replace a perfectly good 20 inch (0.51 meters) ring life buoy that is currently on board their vessels or to replace previously approved white ring life buoys. The Coast Guard agrees that this would be an unnecessary added expense. Therefore, an existing 20 inch (0.51 meters) or larger ring life buoy will be permitted to remain on board regardless of color (white or orange) to meet the requirements of this section as long as it is in good and serviceable condition.

Several comments expressed the opinion that a line 90 feet (27.4 meters) in length attached to a ring life buoy was excessive. The Coast Guard agrees that this length is not necessary for smaller vessels as was proposed. Therefore, vessels under 65 feet (19.8 meters) in length need only be equipped with a line of 60 feet (18.3 meters) in length.

Some comments stated that a ring life buoy is an unnecessary piece of equipment on board a vessel with only one individual on board. The Coast Guard disagrees. A ring life buoy is a relatively inexpensive piece of equipment which is invaluable when rendering assistance to others. Also, in the event of a capsizing, it should be available for use by the operator. The current regulations for pleasure vessels over 16 feet (4.9 meters) in length require a Type IV PFD regardless of the number of individuals on board.

As previously mentioned in the discussion of § 28.110, a delayed implementation until November 1, 1991, has been included for ring life buoys to permit manufacturers to meet the expected increased demand.

It should be noted that ring life buoys with approval numbers in the 160.009 series are no longer obtainable. However, those ring life buoys are still acceptable if in good and serviceable condition.

Section 28.120 Survival Craft

This was § 28.125 in the NPRM. The requirements for survival craft are contained in this section. A survival craft such as a lifeboat or liferaft extends survival time by keeping survivors of a casualty out of the water to prevent death from hypothermia and drowning. Survival craft become more important when the vessel operates in colder waters, waters further from potential rescuers, and in more adverse weather and sea conditions. Immersion suits play an important role in extending survival time, but they do not replace and are not as effective as survival craft that keep individuals out of the water.

The requirements for survival craft are graduated based upon the area of operation. The minimum requirement for the most exposed routes is inflatable liferafts with enough total capacity to accommodate all individuals on board. The inflatable liferafts must be of the same "ocean service" or "SOLAS" (International Convention for the Safety of Life at Sea, 1974, as amended) (SOLAS 74/83) type that are currently used on inspected commercial vessels that operate in ocean service.

For vessels on less exposed routes (generally closer to shore), a less sophisticated liferaft may be used. The Coast Guard is considering approval of a "coastal" liferaft that would not include as much equipment, and might not be required to have an inflatable floor or insulated canopy. The details of the proposed standards for "coastal" liferafts will be published in the Federal Register under CGD 85–205, RIN 2115–AC51.

The inflatable buoyant apparatus is another device accepted for use in less exposed waters, and for vessels in ocean waters where the Act only provides authority to require buoyant apparatus. This device resembles an inflatable liferaft, except that it has no canopy or equipment packs, and can be used effectively while floating either side up.

In waters close to the coastline where water temperature is normally above 59 °F (15 °C), the minimum required equipment is a buoyant apparatus (rigid) or life float. These devices provide some flotation for survivors, but do not support them completely out of the water. They are suitable for use only where rescue is close at hand and hypothermia is not an immediate threat. In other warmer, more protected waters, survival craft would not be required. The life preservers and, in some cases, immersion suits would provide flotation in most abandon-ship emergencies.

Section 28.105 would also require survival craft required by § 28.120 to be Coast Guard approved. However, unapproved survival craft of a type similar to that required by § 28.120 will be permitted on vessels fitted with them, if that survival craft was on board on the effective date of these regulations, is serviced annually as required by § 28.140, and remains in good and serviceable condition.

Paragraph (e) explains that for unapproved inflatable liferafts, table 28.120 (a), (b), or (c) may not specify an equipment pack; in these instances a coastal equipment pack is required. Under § 28.130, unapproved inflatable liferafts on vessels in ocean service that operate beyond 50 miles from the coastline or beyond 20 miles from the coastline in cold waters, have to be provided with the survival equipment packs appropriate for their service.

Under § 28.120 there is a graduated implementation schedule for having survival craft on existing commercial fishing industry vessels. Existing, documented vessels that operate in the North Pacific area (generally north of the Strait of Juan de Fuca) would have to comply by September 1, 1992. Existing, documented vessels that operate on the Great Lakes or in the Atlantic Ocean, north and east of a line drawn at a bearing of 150° true from Watch Hill Light, Rhode Island, must comply with this section by September 1, 1993. All other existing, documented vessels must comply with this section by September 1, 1994. By September 1, 1995, all vessels, including state numbered vessels, would have to comply with this section.

Under § 28.305, there is no graduated implementation schedule for survival craft on vessels built after or which undergo a major conversion completed after the effective date of the regulations. On the date they first operate, or the date on which they first operate after the conversion is completed, survival craft are required to comply with § 28.120.

After reviewing a draft of the NPRM, the Committee recommended to the Coast Guard that the proposed requirements for survival craft applicable to vessels that operate beyond the Boundary Lines include a requirement to carry an inflatable liferaft. While the Coast Guard agreed in principle with the Committee, the Act gives limited authority in the area of survival craft, and inflatable liferafts cannot be required on all vessels that operate beyond the Boundary Lines.

Two other rulemakings would require certain inspected vessels to increase the number of inflatable survival craft which they carry. One of these rulemakings involves the proposed revision of the requirements for small passenger vessels published on January 30, 1989 (54 FR 4413), CGD 85–080, RIN 2115–AC22, 46 CFR Subchapter T, Small Passenger Vessel Inspection and Certification. The second is a proposed revision to the lifesaving requirements for large inspected vessels published on April 21, 1989 (54 FR 16198), CGD 84–069, RIN 2115–AB72, 46 CFR Subchapter W, Lifesaving Equipment.

The Coast Guard is concerned about the combined effect of these rulemakings on the ability of the inflatable survival craft industry to respond to the demand without having an adverse affect on the quality of the survival craft and the cost to the purchaser. As a consequence, the phased implementation schedule for requiring inflatable survival craft on commercial fishing industry vessels is intended to spread out the demand for inflatable survival craft, while ensuring that vessels subject to the higher risks, such as those in the north Pacific area, are equipped with survival craft at the earliest practicable date.

Some comments stated that proposed table 28.125 was difficult to comprehend due to the many variables needed to determine the type of survival craft required. The Coast Guard agrees and the table has been split into three separate tables, one for documented vessels, one for undocumented (state registered) vessels with less than 16 individuals on board, and one for undocumented vessels with more than 16 individuals on board. Further clarification is provided by using the Boundary Lines to describe the areas of operation as an entry variable for the tables, but without regard to the location of "high seas." It was felt that some of the confusion caused by the table in the NPRM resulted from trying to describe the area of operation in reference to two lines of demarcation, namely the Boundary Lines and the line marking the territorial seas, seaward of which is the high seas. This is not expected to degrade safety but simply allow for easier use of the tables by all interested parties.

The tables in § 28.120 are complicated by the need to ensure that every combination of vessel type, number of individuals, area of operation, water temperature, and vessel length are included, even though some combinations are unlikely. For instance, table 28.120(c), undocumented vessels with more than 16 individuals on board, contains an entry for a vessel less than 36 feet (11 meters) in length. While a vessel operating in such fashion is possible, it is unlikely.

Some comments stated that existing unapproved inflatable liferafts should be allowed to continue in service. The Coast Guard agrees and this section has been modified to allow for continued use of unapproved inflatable liferafts installed before September 15, 1991, so long as these liferafts meet the annual servicing requirements in § 28.140, are equipped with the required equipment pack, and are maintained in good and serviceable condition.

Several comments stated that the rules should allow a skiff or other auxiliary craft carried on board and normally used in fishing operations to be substituted for an inflatable liferaft, as well as for other survival craft, since this was the intent of the drafters of the Act. The Coast Guard disagrees that the intent of the Act was to allow substitution of any auxiliary craft on board a vessel for any required survival craft.

The Act does not address substitution of survival craft. In fact, section 4502(b)(2) of the Act requires regulations for lifeboats or liferafts on documented vessels operating outside the Boundary Line or with more than 16 individuals on board. The legislative history of the Act does address the matter of a skiff or a small vessel being used as a substitute for survival craft. However, inasmuch as the Act is clearly worded and does not address this substitution, the Coast Guard's opinion is that Congress intended the Coast Guard to have discretion in choosing the conditions under which such a substitution is appropriate. A skiff, a small vessel, or another auxiliary craft is, in most cases, an open vessel, or another auxiliary craft is, in most cases, an open vessel without built-in internal buoyancy. This type of craft may provide comparable protection as a buoyant apparatus, life float, or inflatable buoyant apparatus but is not considered to provide protection comparable to that offered by an inflatable liferaft. Consequently, substitution of an auxiliary craft for an inflatable liferaft will not be authorized.

The NPRM contained provisions for substitution of auxiliary craft for buoyant apparatuses, life floats, and inflatable buoyant apparatuses under certain conditions. These provisions have been retained and this paragraph has been redrafted to clarify the conditions under which an auxiliary craft may substitute for a required survival craft.

One comment recommended that a short emergency actuator cord be installed in inflatable liferafts so that the entire painter need not be pulled from the container to inflate the raft. During the investigation of the sinking of the M/V Aleutian Enterprise, one of the survivors stated that having to pull the entire painter from the canister containing an inflatable liferaft while wearing his immersion suit took a very long time. This delayed inflation of the liferaft. While this did not result in any additional fatalities in this instance, in more adverse conditions rapid manual deployment of an inflatable liferaft could mean a higher probability of individuals surviving a casualty. The idea of making inflatable liferafts easier and quicker to deploy manually has merit, but is beyond the scope of this rulemaking. Interested manufacturers may wish to pursue this recommendation as a change to their presently approved rafts or when new rafts are submitted for approval.

Several comment letters and oral comments delivered at the public hearings expressed the opinion that survival craft should not be required on a vessel if it is unsinkable. The Coast Guard partially agrees with this concept and has added paragraph (h). This paragraph permits certain vessels which comply with 33 CFR part 183 for quantity of flotation to be exempt from the requirements for survival craft. These vessels must be less than 36 feet in length and generally operate within 12 miles of the coastline. While a craft that does not sink offers some flotation aid, it does not offer the same level of protection that survival craft provide. For this reason it is felt that the exemption for survival craft should be limited to those vessels which operate not more than 12 miles from the coastline.

Many comments expressed the opinion that survival craft are not necessary when operating near the coastline with only a small number of individuals on board. They also pointed out that small vessels did not have the room for the stowage of survival craft,

especially inflatable liferafts. They further pointed to problems, especially on trollers, with inflatable liferafts being unable to float free from a small capsized vessel because of the possibility of the liferaft hanging up on the vessel's rigging. Nearly all of the individuals submitting comments pointed to the high cost of inflatable liferafts in relation to the cost of their vessels and their income derived from commercial fishing activities.

The Draft Regulatory Evaluation identified this segment of the industry as being especially hard hit economically by the proposed rules. The Coast Guard is sensitive to the burden placed on owners of small commercial fishing industry vessels, especially those operating singly or with a crew of one or two individuals. Requirements for survival craft on these small vessels will be addressed in the SNPRM as previously mentioned. In the interim, vessels with less than 4 individuals on board operating within 12 miles of the coastline are exempted from this section by paragraph 28.120(b). This exemption was specifically chosen as a clear method for operators and enforcement officials to determine the need for survival craft since it does not vary geographically and is not tied to the location of the Boundary Lines. Most of the Boundary Lines are located closer to shore than 12 miles. However, where a Boundary Line is beyond 12 miles from the coastline, survival craft may be required.

Some comments stated that the definitions of "cold water" and "warm water" were not concise enough to be complied with or to enforce. The definitions remain unchanged in this rule, however, on May 20, 1991, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 7–91, "Determination of Cold Water Areas" to provide guidance for all interested parties.

Section 28.125 Stowage of Survival Craft

This was § 28.130 in the NPRM. Survival craft are of no use to personel if the survival craft are trapped by a sinking vessel. This section requires that survival craft be arranged to automatically float free from a sinking vessel or be readily accessible for launching. A float-free arrangement ensures that the survival craft will be available if the vessel sinks before the crew can prepare the survival craft for launching. Many capsizings and sinkings have occurred where there was no time to prepare survival craft prior to individuals abandoning the vessel. A recent sample of this was the sinking of the M/V Aleutian Enterprise, in which the vessel sank in less than 10 minutes.

The NPRM specifically requested comments on the feasibility of the proposed requirement for all affected vessels. The Coast Guard requested information from owners of vessels that may not have room to stow float-free survival craft and alternative recommendations were solicited. As mentioned in the discussion of § 28.120, many owners of small vessels stated that the only location for survival craft was the top of the deckhouse. This caused concern because of the relatively high weight of some of the survival craft coupled with the relatively high height of stowage resulted in degradation of operational stability. While nobody was opposed to float-free survival craft, there were no recommendations for improvements to the stowage requirements proposed.

Section 28.130 Survival Craft Equipment

This was § 28.135 in the NPRM. This section requires survival craft equipment which is similar to those for inspected vessels. Inflatable liferafts are required to be packed with SOLAS A, SOLAS B, or Coastal Service equipment packs. Life floats, inflatable buoyant apparatus, and buoyant apparatus are not required to be equipped with equipment packs but would be required to be fitted with a lifeline, pendants, a painter, and a light.

Additionally, this section prohibits the carriage of survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, or buoyant apparatus unless that survival craft complies with the requirements for installation, arrangement, equipment, and maintenance contained in 46 CFR part 94.

One comment suggested that the regulations be specific concerning the type of light that is required for survival craft. The Coast Guard agrees and amplifying information has been added. A floating electric water light with Coast Guard approval number series 161.010 is required (specification 46 CFR 161.010). A light is not required for inflatable buoyant apparatus, since a condition of approval is inclusion of a light.

Section 28.135 Lifesaving Equipment Markings

This was § 28.140 in the NPRM. Marking requirements for lifesaving equipment are contained in this section and are similar to the requirements published for inspected vessels in proposed 46 CFR subchapter W, Lifesaving Equipment, CGD 84–069, RIN 2115–AB72 (NPRM published April 21, 1989 at 54 FR 16198). Most floating items of survival equipment are required to be marked with the name of the vessel and with retroreflective material in accordance with the internationally agreed upon manner as outlined in the IMO Resolution A.658(16) (previously Maritime Safety Committee Circular 513), "Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances." Inflatable liferafts and inflatable buoyant apparatus are exempt from the marking requirements of this section, since they are affixed with identification and retroreflective material, prior to packing, which can be used to identify them.

Marking of lifesaving equipment is intended to assist search and rescue operations by making the lifesaving equipment more visible and identifying the individual or the vessel from which the equipment originated. The NPRM proposed delayed implementation of up to one year for these requirements. The final rule retains this provision, although early marking is highly recommended.

The marking requirements for immersion suits in this section are related to the sizing issue discussed previously under § 28.110. Immersion suits may be marked with either the name of the vessel or the individual to whom the immersion suit is assigned. The main purpose for the marking of survival equipment is to enable identification of the vessel the equipment belongs to, in case it is found at sea or washed ashore. Marking an immersion suit with the name of the suit's owner or the individual to whom it is assigned would allow the suit to move with the individual from vessel to vessel without the need to continually remark it. Some fishermen have purchased personal immersion suits. This would also be especially helpful for those who have purchased the smallest and largest sizes of immersion suits. Having the name of the individual marked on the suit should still allow the vessel involved to be identified.

Section 28.140 Operational Readiness, Maintenance and Inspection of Lifesaving Equipment

This was § 28.145 in the NPRM. This section requires all (approved and unapproved) inflatable liferafts and inflatable buoyant apparatuses to be inspected and serviced annually at a Coast Guard approved liferaft servicing facility. New inflatable liferafts and inflatable buoyant apparatus would not have to be serviced until after they were two years old. A Coast Guard marine inspector is not required to witness

servicing of equipment for uninspected vessels.

The Coast Guard is considering approval of servicing facilities to service unapproved liferafts, as permitted in § 28.120(c), in order to facilitate the inspection and maintenance requirements for all liferafts, whether Coast Guard approved or not. Approval and servicing of inflatable liferafts is the subject of another regulatory project (CGD 85–205, RIN 2115–AC51). An NPRM on this subject is expected to be published in the Federal Register in 1991.

Many comments stated that the regulations should permit a three year interval between servicing for inflatable liferafts, because of servicing costs. The Coast Guard disagrees. Packed inflatable liferafts contain dated survival equipment which must be replaced. Additionally, manufacturers feel that the varying conditions of stowage and the fact that they have no control over those conditions or treatment of the liferafts after they are placed on board vessels makes annual servicing necessary to ensure reliability. During the course of an annual cycle the liferafts are subject to extreme temperature and humidity changes throughout which could effect the performance of a liferaft, if not serviced on an annual basis.

In a recent casualty in which there were no survivors, the vessel's inflatable liferaft was found. The annual servicing was more than a year overdue. This inflatable liferaft had one of the two buoyancy chambers ruptured. It is not clear whether the overdue servicing played a role in the chamber failure, or if the liferaft failure played a role in the fatalities, but any degradation or damage to the liferaft may have been discovered at the annual servicing.

Paragraph (d) has been added to this section to indicate that escape routes must not be obstructed. A recent casualty investigation questioned whether the escape routes were blocked by temporary stowage of materials being used on board the vessel. Good safety practice requires that escape routes not be in any way reduced in size or accessibility by ship's equipment, especially by temporary stowage of equipment or materials. The Act does not address such an obuious practice as ensuring escape routes are not blocked. The Coast Guard's position is that specific authority is unnecessary for a requirement such as this, which is clearly in keeping with the intent of the Act and requires no equipment modifications.

Section 28.145 Distress Signals

This was § 28.150 in the NPRM. This section requires visual distress signals on all commercial fishing industry vessels, except those operating on well sheltered waters such as rivers, as allowed by the definition of "coastal waters." Visual distress signals can be used to attract the attention of nearby vessels and aircraft, and are useful in alerting them to an emergency situation, or directing them to a vessel in distress. As specified in this section, vessels that operate beyond three miles from the coastline are required to carry the same type of flares and smoke signals as vessels that operate more than three miles from the coastline on the Great Lakes. In addition, vessels carrying inflatable liferafts must have distress signals packed in the liferafts as part of the SOLAS A, SOLAS B, or Coastal Service equipment packs required by § 28.130.

Vessels that operate in coastal waters, as defined in 33 CFR 175.105(b), and within three miles of the coastline on the Great Lakes are required to carry the visual distress signals required for recreational boats under 33 CFR part 175, subpart C. Coastal waters include certain large bodies of water such as bays, sounds, harbors, rivers, and inlets where any entrance exceeds 2 nautical miles between opposite shorelines.

Distress signals complying with these requirements must be on board affected vessels not later than 2 months after the effective date of the regulations. In the NPRM, the Coast Guard requested that equipment manufacturers specifically identify problems with supplying large numbers of distress signals on relatively short notice. While there were few comments directed to this concern, the discussion in § 28.110 concerning delayed implementation dates is applicable.

One comment indicated that the Boundary Line geographical break point in table 28.150 (now Table 28.145) caused confusion in interpreting the table. The confusion resulted from the fact that the Boundary Lines extend more than 3 miles from the coastline in some areas. The Coast Guard agrees and the wording has been clarified by deleting the Boundary Lines as a delineator from the table.

A few comments pointed out typographical errors in approval numbers in table 28.150 of the NPRM, now table 28.145. There was one typographical error which has been corrected, but discussion here of approval number series in general should alleviate some confusion. Several items of survival equipment with approval number series that begin with 160.0XX can also receive the approval number 160.1XX. The "1" replaces the "0" when the approved item also meets the requirements of SOLAS 74/83. For vessels more than 50 miles from the coastline, table 28.145 requires specific SOLAS 74/83 equipment. For vessels closer to the coastline, an option is provided since SOLAS 74/83 approved equipment is not required.

Some comments opposed the requirement for distress signals close to shore. The Coast Guard's position is that this equipment is essential for all vessels not in well sheltered waters. It is recognized that in an emergency a radiotelephone is often used to summon nearby vessels or rescue resources. However, because radiotelephones are dependent upon an electrical source of power they are not always reliable, even when equipped with an emergency source of electrical power. If distress signals are not available, the vessel will have no means to summon assistance. For vessels close to the coastline, the signal requirements are the same as those which have been in effect for recreational boats for over 10 years.

Section 28.150 Emergency Position Indicating Radio Beacons (EPIRBs)

This was § 28.155 in the NPRM. On the same date that the NPRM was published, April 19, 1990, a separate notice of proposed rulemaking concerning EPIRB carriage on uninspected vessels, including commercial fishing industry vessels, was published (56 FR 14922) under CGD 87–016, RIN 2115–AC69. That NPRM was in response to the mandate of the EPIRBs on Uninspected Vessels Requirements Act, Public Law 100–540. All comments concerning EPIRBs on commercial fishing industry vessels submitted in response to the NPRM on this rulemaking were considered in developing the final EPIRB regulations for uninspected vessels. Those final regulations are expected to be published in the Federal Register soon under CGD 87–016a, RIN 2115–AC69. In order to prevent redundancy, § 28.150 has been amended to merely refer to the requirements for EPIRBs on all uninspected vessels, including commercial fishing industry vessels, in 46 CFR 25.26–1.

There has also been a provision added to this section that calls attention to the Federal Communication Commission requirements for a Ship Radio Station License in 47 CFR part 80.

Section 28.155 Excess Fire Detection and Protection Equipment

This was § 28.160 in the NPRM. This section allows fire fighting and fire detection equipment which is not required, provided it does not endanger the vessel or the personnel on board and is listed and labeled by an independent nationally recognized testing laboratory. Provisions have been added to clarify that excess equipment installations must be in accordance with appropriate industry standards for design, installation, and maintenance.

The terminology used to describe the laboratory that lists and labels the excess equipment has been changed to "an independent, nationally recognized testing laboratory" for clarification. This same wording is now also used for fixed gas fire extinguishing system components in § 28.320.

Section 28.160 Portable Fire Extinguishers

This was § 28.165 in the NPRM. This section requires portable fire extinguishers for all vessels. Vessels of not more than 65 feet in length, including sail powered commercial fishing industry vessels such as "skipjacks", are required to meet the existing regulations for portable fire extinguishers in 46 CFR part 25, subpart 25.30. In addition to the requirements of 46 CFR part 25, subpart 25.30, vessels over 65 feet in length are required, as a minimum, to carry the portable fire extinguishers specified in table 28.160 (Table 28.165 in the NPRM). The requirements in this section are similar to those for inspected vessels and have not been changed from the NPRM.

Section 28.165 Injury Placard

This was § 28.170 in the NPRM. This section requires specific wording on and construction of an injury placard required by the Act in 46 U.S.C. 4502(a)(8) and 10603, to be aboard all commercial fishing industry vessels. The NPRM (§ 28.170) would have required the placard to be at least 8½ inches by 11 inches and be posted in a prominent place accessible to the crew. A number of comments objected to this requirement. The Coast Guard must keep the regulation because it is specifically required by the Act in 46 U.S.C. 4502(a)(8) and 10603. Other comments stated that an 8½ inch by 11 inches placard was too large. The Coast Guard agrees. The size has been reduced to 5 inches by 7 inches.

The format of the placard as originally published in the NPRM has also been changed. The Coast Guard has published NVIC 4–89 "Introduction to Human Factors Engineering." The NVIC contains a labeling overview section, a synopsis of techniques, and examples of effective labeling. Use of this NVIC will increase the readability and effectiveness of labels. The NVIC addresses reader familiarity, brevity, format, characters, and numbers and location. Anyone responsible for providing the injury placard, the emergency instructions, or any other type of label or marking should use the NVIC 4–89 as a reference. The revised placard format applies human factors engineering labeling techniques to increase the readability and effectiveness of the placard. Specifics such as letter size are subject to human variables, such as how far away from the placard the reader will be, and will not be made a part of the regulation.

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Line or With More than 16 Individuals On Board

Section 28.200 Applicability

This section describes the applicability of this subpart. This subpart implements the mandate of 46 U.S.C. 4502(b). The requirements of this subpart are in addition to the requirements of subparts A and B. This subpart applies to all documented vessels that operate with more than 16 individuals on board and all documented vessels that operate beyond the Boundary Lines. The Boundary Lines are described in 46 CFR part 7, and the rules for documenting vessels are contained in 46 CFR part 67. An individual is any individual on board for any reason.

During the public hearing, several speakers requested that the Coast Guard modify the locations of the Boundary Lines to make application of the regulations more consistent geographically and to bring the level of risk into closer agreement with the area of operation. For instance, it was pointed out that the waters of Cook Inlet, Alaska, are some of the most treacherous fishing grounds contiguous to the United States. However, these waters are inside the defined Boundary Line, and thus, vessels operating in Cook Inlet would be subject to survival craft requirements that are not appropriate. The Coast Guard agrees that the location of the Boundary Lines may seem inconsistent, if viewed from the perspective of any one set of regulations. There are many regulations in which the location of the Boundary Lines plays a part and these must also be considered in determining the location of Boundary Lines. While there are instances besides Cook Inlet where using the appropriate Boundary Line as a means of assessing risk seems inappropriate, modifying the location of a Boundary Line for the purposes of these regulations could be considered as an attempt to circumvent certain mandates of the Act. That is not the Coast Guard's intention and modifying the location of a Boundary Line in any locality is beyond the scope of this rulemaking.

The Coast Guard evaluates requests for modification of a Boundary Line on merit. If there are compelling reasons for modifying the location of a Boundary Line, considering all factors, a rulemaking project is initiated.

Section 28.205 Fireman's Outfit and Self-Contained Breathing Apparatus

This section contains requirements for the carriage of at least two fireman's outfits on vessels with more than 49 individuals on board. A fireman's outfit was proposed in the NPRM as an aid for rescuing trapped individuals in the event of a fire. Vessels with more than 49 individuals on board are likely to be relatively large with many accommodation spaces and large, more complicated work spaces than the typical commercial fishing industry vessel. The likelihood of fire increases as the number of work spaces and the size of the work spaces increases. Fireman's outfits are considered necessary to allow for the rescue of individuals liable to be trapped during a fire and to aid in fighting a fire. Several comments pointed out that it was poor practice to have only one fireman's outfit and recommended that at a minimum two should be required; one to accompany the other. The Coast Guard agrees and this section has been modified to require at least two fireman's outfits. NVIC 4–88, "Protective Equipment Required for Fireman's Outfits," provides useful guidance for selection of equipment for these outfits.

Some comments pointed out that ammonia is used as a refrigerant on some large vessels. The health hazards of ammonia are well known, and these comments recommended that such vessels should be required to be equipped with Coast Guard approved self-contained breathing apparatuses (SCBAs).

The Coast Guard agrees that there should be protection from this potential health threat and has modified this section to include a requirement for SCBAs for vessels which use ammonia as a refrigerant. For the same reason as fireman's outfits, two SCBAs are the required minimum. Additionally, at least

one spare air bottle is required for each SCBA. The Coast Guard encourages the carriage of extra air bottles to provide an opportunity to participate in "hands on" drills with individuals actually wearing the SCBAs.

In an effort to facilitate obtaining the required equipment and reduce the burden on the industry, the Coast Guard is moving toward accepting readily available equipment which is designed and used for purposes similar to that for which the Coast Guard has developed specific requirements. Consequently, paragraph (e) of this section requires each self-contained breathing apparatus to be approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) rather than be approved under Coast Guard specifications in 46 CFR part 160, subpart 160.011 as proposed in the NPRM. This equipment is further required to have as a minimum a 30 minute air supply, and a full facepiece. This paragraph should make it easier to obtain the required self-contained breathing apparatus.

Section 28.210 First Aid Equipment and Training

A number of comments expressed a desire to have the rules include a list of contents for the medicine chests and first aid kits. The Coast Guard does not wish to develop detailed regulations for the first aid equipment for the many different categories of commercial fishing industry vessels. The Coast Guard prefers performance type requirements instead of a detailed list of equipment. Consequently, no change has been made.

The Coast Guard considers it to be the owner's responsibility to ensure that each vessel is properly equipped. This includes determining the equipment that is necessary for the first aid kit. It is expected that many organizations, including the American National Red Cross, can provide recommendations on the equipment that is appropriate for each vessel. Many industry organizations such as the North Pacific Fishing Vessel Owners Association publish guidance for their members on minimum first aid equipment considered appropriate. It is the responsibility of the master or individual in charge of the vessel to ensure that the owner's first aid kit and medicine chest are properly maintained on board the vessel.

Some comments expressed concern for the proposed wording dealing with medicine chests "* * * stowed in a location accessible to all individuals on board." This wording was interpreted to require that any individual on board have ready access to the medicine chest. This was not the intent of the proposed regulation and this portion of the rule has been reworded to require the first aid manual and medicine chest to be in a readily accessible location.

Several comments expressed concern that the remote location of some crewmen would make obtaining the required training burdensome and that the number of individuals required to obtain the training would also add to the burden. The Coast Guard recognizes this concern. However, as explained in the preamble to the NPRM, without proper training, the required first aid equipment is not as useful. The NPRM proposed an effective date two years after the effective date of the regulations before the training is actually required. This provision has been retained in the final rule to allow time to plan and attend the training, although the Coast Guard encourages pursuit of earlier training.

One comment addressed the difficulty in meeting the training requirement with transient crews. The Coast Guard is aware that some segments of the commercial fishing industry is transient, but is of the opinion that there is a core that comprises the majority of the industry that is not transient.

The proposed requirements concerning acceptable training courses are similar to those found in 46 CFR 10.205 for licensed individuals and, in fact, individuals in possession of a valid license will meet the requirements of this part. Section 28.210 contains no provisions for maintaining training certificates, such as periodic refresher courses, such as is commonly required to remain certified in CPR. While the Coast Guard supports periodic refresher training, such a requirement would be too burdensome on the industry and on the Coast Guard, which must enforce and administer these rules. It is hoped that consctientious owners and operators will voluntarily see that individuals periodically take refresher courses.

Section 28.215 Guards for Exposed Hazards

This section requires guards for exposed hazards. Running machinery is required to have hand covers, guards, or railings to reduce the chance of personnel being injured while working around the moving gears, belts, and chains. These guards are required to be retro-fitted on existing vessels after the effective date of the regulations, if not already so equipped. The economic impact of retrofitting guards is expected to be small. Because it is considered good marine practice to have machinery guards and rails, the larger vessels likely to be subject to this section probably have guards installed already.

This section has been slightly modified to clarify the intent of the regulation. "All hot exhaust pipes" has been replaced with "each exhaust pipe from an internal combustion engine which is * * *." Paragraph (a) has been added to make it clear that the requirements of this section apply to every space on board a vessel. This clarification is meant to alleviate questions concerning protection of individuals working on fish processing equipment in particular.

Section 28.225 Navigational Information

This section requires each vessel to have on board adequate up-to-date charts necessary to safely navigate on each voyage. Other navigational information appropriate for an intended voyage is also required. Vessels of 39.4 feet in length or over would be required to maintain a copy of the Inland Navigation Rules when operating inside the COLREG demarcation line.

Requiring nautical charts and compasses (see § 28.230) is intended to help vessel operating personnel navigate without grounding. Operating personnel should always know the correct position of the vessel and be able to use a chart to determine a safe course to steer using the compass. Charts are also being required to help operating personnel determine their position when assistance is needed.

A number of comments suggested that the proposed regulation was too general and that provisions should be made to specify what nautical charts or appropriate information is required. The Coast Guard agrees and is amending the rules to better describe what type of charts are required, and specify the other appropriate information considered minimally acceptable for safe navigation.

A number of comments objected to the proposed requirement to keep charts up-to-date and recommended that this requirement be deleted. The Coast Guard disagrees and has not changed this requirement. As revised in this final rule the regulations specify that each chart used in navigation must be currently corrected. The Coast Guard must require this standard of care as a part of meeting the intent of the Act. It is generally recognized as good seamanship for all charts to be maintained in an up-to-date condition. Corrections are made to point out factors affecting safe navigation including changes in navigational hazards. The mechanism to ensure that

the latest navigational information is available is procurement of the monthly Notice to Mariners, published by the Defense Mapping Agency, available at no cost to vessel owners.

There were several comments regarding the requirement for carriage of the Inland Navigation Rules. This regulation is based on the Pilot Rules of Annex V of the Inland Navigation Rules. The Inland Navigation Rules are required on vessels of more than 39.4 feet in length when operating on U.S. inland waters. The proposed rule was reworded to clarify when a vessel is in U.S. inland waters. Since there is no collision regulations (COLREG) demarcation line in Alaska, that State contains no U.S. inland waters. Therefore, vessels operating in Alaskan waters are not required to carry the Inland Navigation Rules.

Section 28.230 Compasses

This section requires each vessel subject to this section to be equipped with an operable magnetic steering compass with a compass deviation table at the operating station. More sophisticated equipment such as a gyrocompass could also be fitted at the steering station for primary use; but a magnetic compass would still be required due to its reliability.

Section 28.235 Anchors and Radar Reflectors

This section combines §§ 28.235 and 28.240 of the NPRM. This section requires that each vessel be fitted with anchor(s) and chain(s), cable, or rope appropriate for the vessel and the waters of the intended voyage. There are many nautical books and classification society rules available for use as a guide in determining the appropriate size for an anchor as well as the appropriate size and length of cable, rope, or chain which is suitable for use with it.

Several comments asked that the Coast Guard provide a table with specific anchor and chain requirements. The Coast Guard prefers to keep the proposed performance standard rather than to list required anchor and chain sizes. The size of anchors, chain/cable as well as the length of the chain/cable is better left to the determination of the vessel owner. The owner's determination should be based upon manufacturer's information, nautical books, and classification society information.

Several comments asked that trawl doors be permitted to be used as substitutes for anchors. While the Coast Guard agrees that such large, heavy items could be adequate for holding the vessel in place in many circumstances, they are not as effective as properly designed anchors. Consequently, these other devices will not be permitted as a substitute for anchors.

This section also requires each nonmetallic hull vessel, such as wooden or fiber reinforced plastic hull vessels, to have a radar reflector if the rigging of the vessel does not provide a radar signature from a distance of 6 nautical miles. Many small nonmetallic hull vessels have been struck while fishing, especially in inclement weather, because their radar signatures were inadequate to allow them to be detected.

No specific standards are being published for radar reflectors. Vessel owners should satisfy themselves that the radar reflector installed will allow their vessel to be detected by radar in all expected conditions of operation, including, but not limited to, situations where other vessels may be close at hand.

Section 28.240 General Alarm System

The NPRM did not propose requirements for a general alarm system, but several comment letters recommended requiring one. The Act at section 4502(b)(7) permits the Coast Guard to develop regulations for "* * * other equipment required to reduce the risk of injury to the crew during vessel operations" if it is determined that a risk of serious injury exists that can be eliminated or mitigated by that equipment. The Coast Guard believes that a general alarm system is such a system. The sinking of the Aleutian Enterprise highlighted the importance of the ability to notify all individuals on board a vessel in a timely and effective manner in the event of an emergency.

This section requires a general alarm system on each documented vessel that has an accommodation space or a work space which is not adjacent to the operating station and which operates outside of the Boundary Lines or that operates with more than 16 individuals on board. The general alarm system must be capable of notifying individuals on board in any accommodation space or work space where they may normally be employed. If a space has high ambient background noise level, a flashing red light must also be provided. As an alternative to a general alarm system, a public address system or other means of alerting all individuals on board may be substituted if it can meet the same performance criteria.

This section will require retro-fitting of the required alarm system on many vessels. As a consequence, the rule does not take effect until 1 year after the effective date of the regulations, although the Coast Guard's position is that safety is better served by earlier installation.

This section also requires standard wording to appear on each general alarm bell and red flashing light. This wording is to inform each individual that when the general alarm bell sounds, or the red light flashes, that they should proceed to their station. This labeling is exempt from the Office of Management and Budget guidelines for collection and posting of information since exact wording is provided.

Section 28.280 of the NPRM would have applied to vessels which underwent a major modification or were built after the effective date of the regulations and would have required a fire alarm system. The requirements of § 28.240 replace that proposed requirement.

Section 28.245 Communication Equipment

This section requires each vessel to be equipped with a VHF radiotelephone capable of transmitting and receiving on the frequency or frequencies within the 156–162 MHz band necessary to communicate with a public coast station or a U.S. Coast Guard station serving the area in which the vessel operates.

A vessel that operates more than 20 nautical miles from the coastline is also required to have a radio transceiver capable of transmitting and receiving frequencies in the 2–4 MHz bands necessary to communicate with a public coast station or a U.S. Coast Guard station serving the area in which the vessel operates.

A vessel that operates more than 100 nautical miles from the coastline is also required to have a radio transceiver capable of transmitting and receiving frequencies in the 4–27.5 MHz bands necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel operates.

A vessel that operates in the waters contiguous to Alaska, regardless of the distance from the coastline, where communication with a public coast station or U.S. Coast Guard VHF station is not possible on the 156–162 MHz or 2–4 MHz bands is required to be equipped with a radio transceiver capable of transmitting and receiving frequencies in the 4–27.5 MHz bands necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel operates.

Satellite communication capability with a system servicing the vessel's operating area or a cellular telephone capable of communicating with a public

coast station or U.S. Coast Guard station is permitted as a substitute for the radiotelephones required.

Communication equipment is required to be located at the operating station and connected to an emergency power source. Communication equipment is considered to be of primary importance. There are numerous cases where communication by radio has been responsible for the timely rescue of individuals on disabled vessels.

Several comments pointed to instances where waves had impacted and broken windows at the operating station resulting in communication equipment getting wet and unusable. These comments recommended that a requirement be included to prevent this. The Coast Guard agrees and a provision has been added that requires communication equipment to be located so that water intrusion into the equipment from windows broken by heavy seas is minimized. Additionally, this section requires communication equipment to be installed to ensure safe operation and to protect the equipment from vibration, moisture, extreme temperature, and excessive voltage or currents.

Many comments objected to the proposed upper limit of the high frequency band of the single side band radio transceiver required on board a vessel operating more than 100 miles from the coastline. The comments stated that most fishing vessels currently have radios with frequencies no higher than 20 MHz and that this allowed them to converse with others at great distances. They argued that they should not be required to replace radios that had proven to be effective and adequate.

The Coast Guard selected 27.5 MHz as the upper frequency limit in these rules because it is the upper frequency range used for maritime communications. The higher frequency band increases communication reliability. A full range of maritime frequencies is required to allow a vessel to communicate during propagation anomalies such as ionospheric disturbances and sun spot cycles. During such disturbances vessels far from the coastline in distress and other vessels that could render assistance may only be able to communicate in the higher frequency band. It is important that all vessels, including those far from the coastline be able to communicate effectively for distress and safety purposes.

These communication rules are intended to address the difficulty associated with transmitting and receiving in the high frequency bands and for the purpose of developing a standard ensuring that a vessel far from the coastline will be able to communicate distress and safety messages to coastal stations and other vessels. The requirements in these rules are based on implementation of the Global Maritime Distress and Safety System (GMDSS).

The GMDSS has been under development by the IMO since the 1970s. It was adopted at an International Conference on Maritime Safety held in November 1988. It will formally enter into force on February 1, 1992, under provisions of SOLAS 74/83. Implementation of GMDSS will require high frequency radios capable of operating in the 4–27.5 MHz bands to be carried on all vessels which are subject to SOLAS 74/83.

The concept of the GMDSS is that search and rescue authorities ashore, as well as shipping in the immediate vicinity of the ship in distress, will be rapidly alerted to a distress incident so that they can assist in a coordinated search and rescue operation with a minimum of delay. While commercial fishing industry vessels are exempt from the requirements of SOLAS 74/83, they sail in the same waters, face the same dangers, and have the same need for emergency communications as do those ships operating under SOLAS 74/83 requirements. The GMDSS will also provide for urgency and safety communications and the dissemination of meteorological warnings and meteorological forecasts. Every ship outfitted with a suite of GMDSS rapid communications equipment prescribed for its operating areas will be able to perform those communication functions essential for the safety of the ship itself and of other ships operating in the same area.

The Federal Communications Commission published a proposed rule to implement the GMDSS in the Federal Register on October 31, 1990 (55 FR 45816). The new rules would apply to U.S. flag vessels subject to SOLAS 74/83. These will include cargo ships of 300 gross tons and over and passenger ships that carry more than 12 passengers regardless of size, that sail on international voyages.

Despite the effectiveness of SSB transceivers operating up to only 20 MHz in the past, the maritime bands now extend to 27.5 MHz for the reasons explained above. In recognition of the expense involve with replacing an existing SSB transceiver with one capable of transmitting and receiving the higher frequency bands, the Coast Guard has included provisions in § 28.245(e) that will permit existing SSB transceivers capable of transmitting and receiving on frequencies in the 4–20 MHz bands to meet the requirement for a transceiver capable of transmitting and receiving on frequencies in the 4–27.5 MHz bands, provided that it was installed prior to September 15, 1991. Should one of these transceivers require replacement, it must be replaced with a transceiver that is capable of transmitting and receiving on frequencies in the 4–27.5 MHz bands.

Section 28.250 High Water Alarms

This section requires an audible and visual alarm at the operating station of each vessel of more than 36 feet in length to indicate high water in a normally unmanned space subject to flooding. Such a space includes a space with a through hull fitting below the deepest waterline; a machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space; or a space with a nonwatertight closure on the main deck if the space is unmanned. For a commercial fishing industry vessel, this includes nearly all spaces below the main deck except cargo holds. This could require some existing vessels to be retro-fitted with bilge alarms.

Section 4502(b) of the Act which applies to documented vessels which operate beyond the Boundary Lines or which operate with more than 16 individuals on board does not specifically address high water alarms. However, the Committee felt strongly that any space below deck which was not under the direct observation of the master or individual in charge of the vessel should be fitted with both a high water alarm and a bilge system to dewater that space. Section 4502(b)(7) of the Act authorizes the Secretary of Transportation to require equipment not specifically identified, if that equipment will minimize the risk of serious injury. The Committee felt that high water alarms and a bilge pumping system is equipment of this type. The Coast Guard agrees and has included requirements in this and the following section for high water alarms and a bilge pumping system.

Section 28.255 Bilge Pumps, Bilge Piping, and Dewatering Systems

This section requires each vessel to be equipped with a pump capable of draining any watertight compartment other than small buoyancy compartments, such as buoyancy air tanks. A portable bilge pump would be required to be provided with a suitable suction hose capable of reaching the bilge of each space it must serve and the

discharge hose must be able to discharge overboard.

A vessel of more than 79 feet in length would be required to be equipped with a fixed, powered, self-priming bilge pump. This pump could be used for other purposes, except as a required fire pump, and would have to be fixed to a bilge manifold. Each bilge suction line is required to be led to a manifold and be fitted with a stop valve and a check valve. The stop valve and the check valve would aid in preventing unintentional back-flooding of spaces while using the bilge piping system.

Several comments pointed out that the bilge pump should not be connected to tanks which are used for consumable fluids such as fuel oil and potable water. As proposed this section would have required such bilge suctions. The Coast Guard agrees with these comments and tanks used for consumable liquids have been excluded from those spaces required to have a bilge suction.

Several comments suggested that bilge suction lines should be fitted with strainers to prevent debris from being sucked into the bilge lines, possibly blocking suction lines or manifold valves. The Coast Guard agrees and has added a requirement for bilge suction lines to be fitted with a strainer with an open area three times the open area of the bilge suction line. This requirement is similar to a requirement for inspected vessels.

The investigation of the sinking of the Aleutian Enterprise pointed out a problem not explicitly addressed in the NPRM. That problem concerns spaces where seawater is introduced into the spaces used in the processing of fish. It is not uncommon on fish processing vessels to use seawater in a largely uncontained manner to help move, clean, and preserve fish. A method commonly used to discharge a portion of the water is chutes on the side of the vessel at deck level. On the Aleutian Enterprise just such an operation was used. This type of arrangement points out two concerns; one, removing the processing water from the processing space and two, preventing water from entering the vessel through the chutes.

The Coast Guard's position is that large amounts of water on deck in the processing space is an unacceptable risk to the individuals working in the space and can lead to stability problems.

The intent of this section is to ensure that an enclosed space in which water might accumulate is fitted with equipment to enable that water to be removed. On most vessels the only spaces of concern are below the waterline. The bottom of these spaces are known as "bilges." On processing vessels water is introduced into enclosed spaces to move fish and fish waste within the space. Many processing spaces are located above the waterline and, therefore, do not have a "bilge."

As a consequence, this section has been modified to require a "dewatering" system capable of removing water at least at the same rate as it is introduced into the space in the processing operations. This addition is considered a clarification of the intent of the proposed requirement and is expected to have a negligible impact on existing fish processing vessels. The dewatering system must also be interlocked with the water supply system so that failure of the dewatering system will prohibit introduction of processing water into the processing space.

In normal processing space arrangements, this section will require a suction in each corner of the processing space so that regardless of the trim or list water can be rapidly removed. A typically arranged bilge pump serving more than one corner of the space would not be able to remove water if any one of its suction lines was not immersed. It is typical in these processing spaces that a submersible pump is installed in a sump in each corner of the processing space. This allows for removing water in one corner of the room, while there is no water in the other corners.

Section 28.260 Electronic Position Fixing Devices

This section contains requirements for each documented vessel of more than 79 feet in length that operates beyond the Boundary Lines or with more than 16 individuals on board to be equipped with an appropriate electronic position fixing device. There is presently no such requirement in 46 CFR Subchapter C—Uninspected Vessels, although many commercial fishing industry vessels are so equipped. Acceptable devices include a Loran receiver, a satellite navigation receiver, or another electronic device which provides accurate fixes in the area in which the vessel operates. Many cases of vessels going around result from operating personnel not being aware of their position. Having this electronic position fixing equipment in conjunction with the navigational information required in § 28.225 should help minimize these incidents.

Section 28.265 Emergency Instructions

This section requires emergency instructions on board each documented vessel which operates beyond the Boundary Lines or with more than 16 individuals on board. The emergency instructions must address at least:

1. Identification of survival craft embarkation stations;
2. Fire and emergency signals;
3. Location and donning instructions for immersion suits, if they are carried;
4. Procedures for making a distress call;
5. Essential action that must be taken in an emergency by each individual;
6. Procedures for rough weather;
7. Procedures for anchoring;
8. Procedures to be used in the event an individual falls overboard; and
9. Procedures for fighting a fire.

Each documented vessel must post these instructions, except for procedures for rough weather, anchoring, man overboard, and fighting a fire; these instructions may be kept readily available as an alternative to posting. A vessel which operates with less than 4 individuals on board is permitted to keep the emergency instructions in a location readily accessible to all individuals on board in lieu of posting.

The emergency instructions are considered necessary to ensure that the master or individual in charge of the vessel formally assigns crewmembers to specific emergency duties and provides for the contingencies involved in dealing with an emergency situation, including abandoning the vessel. The emergency instructions should result in better organization and less confusion during an emergency.

The requirements of this section are not intended to limit an owner in developing emergency instructions. Rather, they should be viewed as a minimum framework in tailoring emergency instructions for a particular vessel. Many examples of emergency instructions have been included as a starting point for the owner to develop more specific and, if necessary, more elaborate instructions. The Coast Guard encourages owners to work with other owners, safety training professionals, and other knowledgeable individuals in developing emergency instructions in order to maximize the usefulness and availability of the instructions.

A contributing factor in a majority of casualties involves the human element. Many fatalities can be directly attributed to individuals not knowing the proper procedures to take in an emergency situation. Such things as individuals not knowing how to don an immersion suit have contributed to fatalities.

The Coast Guard's position is that improving the general awareness of individuals in the procedures to be followed in an emergency situation and

improving their competence and self assurance in these situations will have the largest safety benefit. While the Act gives limited authority to require training, exposing individuals to proper emergency procedures combined with instruction and drill on emergency procedures can make a dramatic difference in ensuring the survival of individuals in emergencies. The Act gives authority at § 4502(b) for regulations dealing with the use of equipment addressed in that section of the Act. It is the Coast Guard's opinion that this authority has been used to its fullest practicable extent in these regulations.

Several comments suggested that these instructions were too important to be limited to only those vessels with 16 or more individuals on board as proposed in the NPRM. The Coast Guard agrees. The proposed rule has been revised to apply to all documented vessels which operate beyond the Boundary Lines. These requirements also apply to documented vessels which operate inside the Boundary Lines if more than 16 individuals are on board.

The step-by-step instructions are for accomplishing specific emergency tasks and are considered important to all vessels. However, most small documented vessels do not have the room to post such a large number of instructions. Therefore, they are only required to maintain the instructions in a location readily accessible to all individuals on board. Guidance on preparing posted material may be found in NVIC 4–89, "Introduction to Human Factors Engineering".

Several comments suggested that a placard explaining emergency broadcast procedures should be required to be posted at all communications equipment installations. This placard would explain to an individual unfamiliar with radio procedures the proper use of the equipment in an emergency. The Coast Guard agrees in princip with these comments. An individual unfamiliar with proper radio procedures would have difficulty effectively making a distress call during an actual emergency. That individual is also unlikely to be able to follow the procedures on a placard in an actual emergency. For that reason, the Coast Guard will require that procedures for distress calls be made a part of the emergency instructions. In this way individuals on board will have an opportunity to become familiar with those procedures in a less stressful environment. This topic must also be part of the drills and instruction required by § 28.270. It is felt that these two methods will be more effective in ensuring an individual on board is capable of making a distress call.

Section 28.270 Instruction, Drills, and Safety Orientation

This section requires the master or individual in charge of a vessel to ensure that drills are conducted at least once each month. Instruction may be combined with the drills or may be at a separate location and at a separate time as long as each individual on board is familiar with their assigned duties and the proper responses to at least the following contingencies:

1. Abandoning the vessel;
2. Fighting a fire in different locations on board the vessel;
3. Recovering an individual from the water;
4. Minimizing the affects of unintentional flooding;
5. Launching survival craft and recovering lifeboats and rescue boats;
6. Donning immersion suits and other wearable personal flotation devices;
7. Donning a fireman's outfit and a self-contained breathing apparatus, if the vessel is so equipped;
8. Making a distress call;
9. Sounding the general alarm; and
10. Reporting inoperative alarm systems and fire detection systems.

The master or individual in charge is not required to conduct the instruction or drills, but is responsible for making sure that it is done. If the master, or individual in charge does not conduct the instruction and drills, a professional trainer, licensed officer, or other individual specially trained for this purpose may conduct the required instruction on the vessel or aid in conducting the drills.

Specific comments were requested on the usefulness of instruction carried out at locations other than on the vessel and on the use of prepared training materials such as video tape presentations. The comments submitted by safety training professionals indicated that the most useful training is that which most closely approximates an actual situation, i.e., on board training using the vessel's emergency equipment. These comments did point out that prepared training aids used either on the vessel or at an alternate location were useful in familiarization and as a refresher, if each individual was directly involved in a discussion of the material led by an individual familiar with the evolution. As a result of these comments, the final rules require that drills be conducted on board the vessel using the vessel's emergency equipment to approximate actual situations as they may happen. Instruction need not be conducted on board the vessel but can be at an alternate site. Currently, there are several commercial sources of such training. It is expected that other sources will be established with publication of these rules.

The master or individual in charge of a vessel must ensure that a safety orientation is given to any individual on board the vessel that has not received instruction and not participated in drills. As with instruction and drills, the master or individual in charge of the vessel is responsible to see that the safety orientation is given, but need not give the orientation. This safety orientation must cover the emergency instructions required by § 28.265 and the evolutions covered in paragraph (a) of this section prior to operating with that individual on board. This would provide a minimum level of understanding of emergency procedures for each individual on board regardless of how long they had been on board.

Coast Guard investigation of casualties on commercial fishing industry vessels has shown repeatedly that being unfamiliar with immersion suits, liferaft launching procedures, and the proper procedures for abandoning the vessel have needlessly resulted in deaths and injuries. This section is meant to ensure that crew members know the proper procedures for the use of the required lifesaving equipment and are familiar with and practiced in the use of equipment needed during an emergency.

Many comments on the ANPRM pointed out the need for licensed individuals on board commercial fishing industry vessels, especially those carrying large numbers of individuals or those that operate on exposed waters. Section 3 of the Act required the Coast Guard to submit a plan for licensing operators of documented fishing industry vessels. That plan, developed in consultation with the Committee, has been submitted to Congress, but there is currently no statutory authority that would require such a license for an operator of a vessel less than 200 gross tons. The requirements in this section for instruction and drills are independent of that study and independent of any requirement for licensing.

The Committee was concerned with the quality of the instruction and drills required by this section. Discussions with the Committee centered around the inability of an individual to conduct effective training without themselves having a thorough knowledge of proper procedures. Therefore, the Committee recommended that the individual

providing the training be required to be trained prior to instructing others.

Section 4502(b) of the Act requires regulations for installation, maintenance, and use of specific equipment. This authority permits the requirements for training, instruction, and drills in the use of emergency and lifesaving equipment recommended by the Committee. Consequently, this section contains a requirement that an individual conducting drills or instruction must have been trained in the proper procedures. A three year period is provided to allow individuals needing this training to obtain it.

One comment from an owner/operator of a commercial fishing industry vessel stated that the proposed requirements for this section for instruction and drills should be removed because his crew was too busy for instruction and drills. The Coast Guard disagrees. The message from Congress is that safety in the commercial fishing industry can no longer be left to voluntary actions. It is the Coast Guard's position that safety is not something that should be dealt with only if time permits, but rather that safety must be considered in every action. Consequently, this recommendation was not adopted and the requirements for instruction and drills have been retained.

The NPRM requested specific comments concerning the qualifications of the individual required by 28.270(b) (now 28.270(c)) to conduct drills. There were no suggestions concerning these qualifications. However, several commenters questioned whether a licensed individual would be considered qualified to conduct the instruction and drills without further training. Individuals licensed to operate inspected vessels of 100 gross tons or more are considered qualified to conduct the instruction and drills without further training and paragraph (c) has been modified to indicate this.

The requirement for training by the individual conducting the instruction and drills is intended to be a performance standard that training institutions can meet in a manner they decided is appropriate for their students. However, the Coast Guard recognizes that there are individuals in the industry who want to attend Coast Guard accepted courses and institutions which want to have formal recognition of their courses. In order for the Coast Guard to be able to formally accept a course of instruction there must be clearly defined requirements. The Coast Guard can not "accept" courses of instruction without going through the rulemakng process.

The Coast Guard intends to propose standards for qualification of instructors, acceptance of curriculum, and procedures by which institutions can obtain acceptance of their courses and instructors. These standards would not be mandatory, but, those institutions which demonstrate that they meet the standards would be authorized to state that their courses met Coast Guard standards.

The intent is to publish these standards as proposals in the SNPRM previously mentioned. It is anticipated that these standards will be drawn from title 46 Code of Federal Regulations for Licensed individuals and the Document for Guidance on Fishermen's Training and Certification, 1988, published jointly by IMO, the International Labor Organization, and the Food and Agriculture Organization of the United Nations.

To provide assistance now, the Coast Guard will provide guidance on instructor qualification and curriculum selection after consultation with the Committee and individuals within the safety training profession. The intent is to publish this guidance in the form of a Navigation and Vessel Inspection Circular (NVIC). NVICs may be obtained by calling (202) 366–6480. The Coast Guard will not review courses of instruction or instructor qualification for compliance with the NVIC. As explained above, prior to any acceptance, regulations must exist. Institutions or individuals would however be able to compare curriculum to that in the NVIC on their own.

This may appear to create a dilemma for those individuals required by this section to have training by September 1, 1994, since the standards have not been published. The Coast Guard does not intend to require certification in training or specific courses of study. It is the Coast Guard's position that Congress never intended for there to be a complicated system for training approvals and certification of individuals.

Compliance with the training requirements of this section can be met in a number of ways. There are a number of institutions which offer Coast Guard approved courses of instruction for individuals expecting to take a Coast Guard licensing examination. The satisfactory completion of pertinent courses by these institutions would meet the requirements of this section. There are other institutions that specialize in safety training in the commercial fishing industry and which offer courses meeting the requirements of this section.

There are still other ways of satisfying the requirements of this section. While professional trainers offer many advantages for those desiring training, this section does not require training from professional trainers. For instance: Training by a local fire department in fire fighting would meet the requirements of this section for training in fighting a fire in different locations on board a vessel; training by local servicing facilities for inflatable liferafts dealing with abandoning the vessel would meet the requirements of this section; and training by local electronics suppliers on voice distress calls would meet the requirements of this section.

Subpart D—Requirements for Vessels Which Have Their Keel Laid or Are at a Similar Stage of Construction on or After or Which Undergo a Major Conversion Completed After September 15, 1991, and That Operate With More Than 16 Individuals On Board

This subpart contains requirements for commercial fishing industry vessels which have their keel laid or are at a similar stage of construction on or after or which undergoes a major conversion completed on or after September 15, 1991, and that operate with more than 16 individuals on board. These requirements are in addition to the requirements of subparts A, B, and C. This means that applicable portions of subparts A, B, and C apply in addition to the requirements of this subpart. For instance, a vessel which has its keel laid on or after September 15, 1991, which does not operate with more than 16 individuals on board and does not operate beyond the Boundary Lines is not subject to the requirements of subparts C and D, but is subject to the requirements of subparts A and B. If that same vessel were to operate beyond the Boundary Lines, the requirements of subpart A, B, and C would apply; and if the vessel operated with more than 16 individuals on board, the requirements of subparts A, B, C, and D would apply.

Section 28.300 Applicability

The requirements in this subpart are in response to 46 U.S.C. 4502(c). In many cases, these rules are more detailed than those of the other subparts and are targeted at safety improvements that can only be accomplished by building in the safety features during original vessel construction or during a major conversion. Modifications made as part of a major conversion will have to incorporate the requirements of this subpart. However, modifications to an existing vessel solely to incorporate the requirements of this section are not

expected, except in especially hazardous cases. The Coast Guard encourages owners, designers, and shipyard supervisors to approach a major conversion as an opportunity to economically improve safety on a vessel.

Section 28.305 Lifesaving and Signaling Equipment

This section requires that each vessel which has its keel laid or is at a similar stage of construction on or after or which undergoes a major conversion completed on or after September 15, 1991, must be equipped with the lifesaving appliances, survival craft, and distress signals required by §§ 28.110, 28.115, 28.145 and table 28.120 (a), (b), or (c), as appropriate, on the date that construction or conversion is completed. Sections 28.110, 28.115, 28.120, and 28.145 each have a provision for delayed implementation, as previously mentioned in the discussion of those sections. The delayed implementation provisions do not apply to a vessel which has its keel laid or is at a similar stage of construction on or after or which undergoes a major conversion completed after September 15, 1991.

Section 28.310 Launching of Survival Craft

This section requires that a gate or other opening be provided in bulwarks, deck rails, or lifelines to facilitate the manual launching of survival craft which weigh more than 110 pounds.

Section 28.315 Fire Pumps, Fire Main, Fire Hydrants, and Fire Hoses

This section specifies the fire fighting equipment required to provide what is considered to be the minimum acceptable level of safety on commercial fishing industry vessels.

Each vessel of more than 36 feet in length would be required to be equipped with a fixed, powered, self-priming fire pump connected to a fixed piping system. The pump and the piping system are not required to be for the exclusive use of fire fighting, but could not be connected to serve as a bilge pump, as previously discussed in § 28.255. In addition, a fire pump on a vessel over 79 feet in length must meet performance standards applicable to the fire pump and piping system similar to the performance standards for inspected vessels.

Since it is uncommon to have a manned engineroom on most commercial fishing industry vessels, the powered fire pumps must be capable of being started from the fire pump itself and from the operating station, including remotely controlling any necessary valves. This same performance standard was proposed for small passenger vessels (CGD 85–080, RIN 2115–AC22, published January 30, 1989, 54 FR 4412.)

Each fire hose on a vessel of more than 79 feet in length is required to be of commercial grade with a corrosion resistant nozzel capable of producing a solid stream and a spray pattern. These requirements, while less specific, are similar to those for inspected vessels. Vessels 79 feet in length or less are premitted to use good commercial grade hose, if that hose is at least ⅝ inch nominal diameter and fitted with an appropriate corrosion resistant nozzle capable of both a solid stream and a spray pattern. Good commercial grade hose of any size would be fitted with corrosion resistant fittings.

Fire hydrants on a vessel of more than 79 feet in length are required to be so located and in sufficient number that any location on the vessel can be reached with a charged fire hose. Each fire hydrant is also required to be fitted with a fire hose at all times while the vessel is operating.

Section 28.320 Fixed Gas Fire Extinguishing Systems

Each vessel over 79 feet in length is required to be equipped with a fixed gas fire extinguishing system in each space containing an internal combustion engine of more than 50 horsepower, an oil fired boiler, an incinerator, or a gasoline fuel storage tank. The fixed gas fire extinguishing system must be approved by the Coast Guard and custom engineered, unless it is an approved pre-engineered system. "Pre-engineered" and "custom engineered" are industry terms and are defined in § 28.050.

Fixed gas fire extinguishing system components are required to be listed by an independent laboratory. The terminology used to describe the laboratory that lists and labels the fixed gas fire extinguishing system components has been changed to "an independent, nationally recognized testing laboratory" for clarification. This same wording is now also used for excess equipment in § 28.155.

The fire extinguishing system design and installation are required to be in accordance with the Coast Guard approved "Manufacturer's Marine Design, Installation, Operation, and Maintenance Manual." Guidance on design and installation of fixed fire extinguishing systems is contained in NVIC 6–72, Ch–1, "Guide to Fixed Fire Fighting Equipment Aboard Merchant Vessels," dated February 28, 1977. The provisions of this circular are well known to manufacturers of fixed gas fire extinguishing systems. A listing of approved fire extinguishing systems is contained in Commandant Instruction M16714.3C, "Equipment Lists" and is available from the Government Printing Office. This information is also available on the Coast Guard's Marine Safety Information System and is available from any Coast Guard Marine Safety or Marine Inspection Office.

Several types of fixed gas fire extinguishing system arrangements are available in choosing a system, depending upon the size of the space protected. A space with a gross volume exceeding 6,000 cubic feet is required to be fitted with a manually actuated and alarmed system; a smaller space could also be so fitted. A system capable of automatic discharge upon heat detection is only permitted in a normally unoccupied space with a gross volume of 6,000 cubic feet or less. A pre-engineered system is permitted only in a normally unoccupied machinery space, paint locker, or a space containing flammable liquid stores with a gross volume of not more than 1,200 cubic feet. A fixed gas fire extinguishing system is permitted to protect more than one space, provided the amount of extinguishing agent is sufficient to protect the largest space.

A pre-engineered fixed gas fire extinguishing system is required to be fitted so that the system can be manually actuated from outside the space protected in addition to any automatic actuation. The system is also required to be equipped with a visual and audible alarm at the operating station to indicate discharge, an automatic device to shut down ventilation in the protected space, and a means to reset these ventilation systems after discharge of the extinguishing agent.

In developing these requirements for fixed gas fire extinguishing systems, the following requirements and recommendations for other vessels were considered: 46 CFR Subchapter H (Passenger Vessels); SOLAS 74/83; NVIC 6–72, Ch–1 "Guide to Fixed Fire-Fighting Equipment Aboard Merchant Vessels"; NVIC 5–86 "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels"; National Fire Protection Association Standard 101 "Life Safety Code"; Canadian regulations for small passenger vessels; and the proposed rules for small passenger vessels (CGD) 85–080, RIN 2115–AC22, published January 30, 1989, 54 FR 4412.)

Section 28.325 Fire Detection Systems

This section requires independent smoke detectors in accommodation spaces of vessels subject to this subpart. The NPRM proposed the applicability as only those vessels operating with more than 49 individuals on board. Several comments pointed to the relatively low cost of fire detectors compared to the safety benefits offered and urged that the applicability be broadened to include all vessels subject to this subpart. The Coast Guard agrees that the safety improvement offered by having a smoke detector in each accommodation space more than offsets the small cost increase for a new vessel or a vessel which undergoes a major conversion. As an alternative to independent, modular smoke detectors, a Coast Guard approved smoke actuated detection system could be installed.

Independent modular smoke detectors are required to comply with Underwriters Laboratories (UL) Standard UL 217, "Standard for Single and Multiple Station Smoke Detectors," and to be listed as a "Single Station Smoke Detector—Also Suitable For Use in Recreational Vehicles." Protection of accommodation spaces on vessels with a relatively large number of individuals is considered necessary, especially in staterooms.

Section 28.330 Galley Hood and Other Fire Protection Equipment

This section requires that each vessel subject to this subpart be fitted with a grease extraction hood and a pre-engineered dry or wet chemical fire extinguishing system over each grill, broiler, and deep fat fryer. The grease extraction hood is required to comply with UL 710, "Exhaust Hoods for Commercial Equipment," and the extinguishing system must comply with National Fire Protection Association (NFPA) Standard 17, "Dry Chemical Extinguishing Systems," or 17a, "Wet Chemical Extinguishing Systems." A large portion of vessel fires originate in the galley; this equipment would help prevent fires and quickly control those that start.

Several comments pointed out that the fire hazard posed by a galley, especially one large enough to accommodate more than 16 individuals, should be required to meet the proposed standards, which originally would have applied to only those vessels operating with more than 49 individuals on board. The Coast Guard agrees and the requirements of this section now apply to all vessels subject to this subpart.

Section 28.335 Fuel Systems

This section contains requirements for fuel systems on board commercial fishing industry vessels, except fuel systems on outboard engines. Portable fuel tanks would be required to meet the requirements of ABYC Project H–25, "Portable Fuel Systems and Portable Containers for Flammable Liquids."

Alternatives to the requirements of this section would be permitted for vessels of 79 feet in length or less. The standards of ABYC Project H–33—"Diesel Fuel Systems", Chapter 5 of NFPA Standard 302—"Pleasure and Commercial Motor Craft," or 33 CFR subchapter S—Boating Safety, are permitted as substitutes.

The Committee felt that this class of vessel (those that operate with more than 16 individuals on board) should be prohibited from having main propulsion engines or generator prime movers powered by gasoline, because of the explosion hazard of gasoline. The Committee also recommended that bunker C be permitted as a fuel. The Coast Guard agrees with the Committee. Gasoline is prohibited as a fuel, except for use in outboard engines; and bunker C fuel is permitted. Because of the viscosity of bunker C, it is frequently heated to permit easier pumping and transfer on board the vessel. This heating can cause safety problems if not done properly. Therefore, bunker C installations are required to comply with the requirements for fuel systems for inspected vessels, in 46 CFR subchapter F—Marine Engineering.

Vents for integral fuel oil tanks are required to be fitted to the highest point in the tank, terminate in a 180 degree bend on the weather deck, and be fitted with a flame screen. These requirements reflect common practice in the marine industry. Also, tanks that can be filled under pressure must have a venting area at least equal to the area of the fill line. This aids in preventing tank overpressurization. A tank that is not filled under pressure would be required to have a venting area of not less than 0.484 square inch (312.3 square millimeters). This value corresponds to the area of ¾ inch nominal type L copper tubing with 0.035 inch wall thickness. This area has been corrected from 0.022 square inch (14.2 square millimeters), incorrectly stated in the NPRM.

Fuel piping is required by this section to be at least 0.035 inch in thickness. It is also required to be seamless and, with two exceptions, made of steel, annealed copper, copper-nickel, or nickel-copper. Aluminum piping is permitted on aluminum hulled vessels in spaces outside a machinery space. Aluminum, with its relatively low melting point, is considered to be unsuitable for fuel oil transfer in machinery spaces. Nonmetallic flexible hose is permitted in lengths not exceeding 30 inches. Nonmetallic flexible hose is commonly used to provide flexibility in fuel lines, especially at connection points to internal combustion engines where vibration can cause fuel line cracking.

Nonmetallic flexible hose is not permitted to penetrate a watertight bulkhead. It also must be in an accessible location so that leaks can be easily detected and repaired.

Fuel piping subject to head pressure from fuel in a tank requires a positive shutoff valve. This shutoff valve is required to be operable from outside the space in which the valve is located. Many engineroom fires could have been quickly brought under control if the supply of fuel oil to the fire was stopped. The fuel shutoff valve will provide that capability.

Section 28.340 Ventilation of Enclosed Engine and Fuel Tank Spaces

This section lists requirements for vessels which store gasoline engines or gasoline storage tanks in spaces that could entrap gasoline vapors. These spaces must be fitted with mechanical ventilation systems with nonsparking fans. The fan motors for such spaces must comply with the requirements for fan motors in hazardous locations on inspected vessels in 46 CFR 111.105–23. The requirement for fan motors is added for clarification of what is considered good marine practice and crucial to preventing explosions.

As an alternative, vessels of not more than 65 feet in length may meet the standards of NFPA 302, chapter 2, section 2–2 or ABYC Project H–2 "Ventilation of Engine and Fuel Compartments" and 33 CFR part 183, subpart K. The NPRM proposed ABYC Project H–32, "Ventilation of Boats Using Diesel Fuel" instead of H–2. Project H–2 is considered to be more appropriate for spaces dealing with storage of gasoline and has replaced Project H–32 as an optional industry standard. Project H–2 will add ventilation requirements not included in Project H–32. Project H–32 did not address the need to ventilate spaces which could contain gasoline vapors, a known explosion hazard.

Section 28.345 Electrical Standards for Vessels Less Than 79 Feet in Length

This section prescribes the requirements and alternative standards for electrical systems on vessels less

than 79 feet in length. Such vessels can comply with the same electrical standards for vessels of more than 79 feet in length or alternative standards. The alternative standards that could be met are ABYC Projects E–8, "AC Electrical Systems on Boats" or E–1, "Bonding of Direct Current Systems" and E–9 "DC Electrical Systems on Boats," as appropriate, for the vessel's electrical system, combined with either NFPA 302 chapter 7, "Electrical Systems Under 50 Volts" and chapter 8, "Alternating Current (AC) Electrical Systems on Boats" or 33 CFR part 183, subpart I, and § 28.375.

This section has been redrafted in this rule for clarity. There have been no other changes from the requirements proposed in the NPRM.

Section 28.350 General Requirements for Electrical Systems

This section requires electrical equipment exposed to the weather or in a location exposed to seas to be waterproof, watertight, or enclosed in a watertight housing. Aluminum is prohibited as a current carrying part of electrical equipment or as wiring. Metallic enclosures and frames of electrical equipment are required to be grounded.

This section requires the amount of electrical equipment to be kept to a practicable level in a space likely to contain vapors from flammable or combustible liquids. Electrical equipment required in such spaces must be explosion-proof or intrinsically safe. Guidance on explosion-proof and intrinsically safe installations is contained in 46 CFR subchapter J—Electrical Engineering Regulations and NVIC 2–89, "Guide for Electrical Installations on Merchant Vessels and Mobile Offshore Drilling Units," dated August 14, 1989.

This section also requires a continuous, non-current carrying grounding conductor on each nonmetallic hull vessel. This grounding conductor is required to connect the enclosures and frames of electrical equipment and other metallic items such as engines, fuel tanks, and electrical equipment enclosures to a common ground point. This grounding conductor must meet the requirements of section 250–95 of the National Electrical Code, NFPA 70.

Section 28.355 Main Source of Electrical Power

This section requires at least 2 electrical generators if any of the essential loads rely on electrical power. Essential loads include interior lighting, steering systems, communication systems, general alarm system, navigation equipment, navigation lights, fire protection equipment, bilge pumps, and the propulsion system and its auxiliaries and controls. Each generator must be attached to an independent prime mover.

The NPRM would have required 2 electrical sources of power. Several comments pointed out that a vessel large enough to carry 16 individuals engaged in commercial fishing would be so large that generators would be necessary to supply the listed essential loads. The Coast Guard agrees and this section has been modified to specify generators for supplying the essential loads rather than simply sources of electrical power.

Section 28.360 Electrical Distribution Systems

This was § 28.365 in the NPRM. This section requires that a distribution system which has a neutral bus or conductor have the neutral bus or conductor grounded. It also requires a grounded distribution system to have only one connection to ground. The one connection to ground must be at the switchboard or, on a nonmetallic vessel, the common ground point.

Section 28.365 Overcurrent Protection and Switched Circuits

This was § 28.370 in the NPRM. This section requires that each source of power be protected against overcurrent and that overcurrent protection for generators not exceed 115 percent of the full load rating. Steering systems would be required to be protected from short circuits only. These requirements are similar to the requirements for inspected vessels contained in 46 CFR subchapter J—Electrical Engineering Regulations.

An ungrounded current carrying conductor must be protected against overcurrent in accordance with its current rating by a circuit breaker or a fuse at the switchboard or distribution box from which it leads. Circuit breakers and switches are required to open all ungrounded conductors.

Further, all devices that disconnect a grounded conductor must disconnect ungrounded conductors as well. These measures ensure that all conductors on the load side of the switch or circuit breaker are electrically neutral.

Navigation light circuits are required to have the necessary circuits switched so that only the appropriate circuit can be energized. If the vessel is engaged in fishing operations, the appropriate fishing navigation lights can be energized.

A separate circuit is required for each installed radio transceiver or radiotelephone. This is intended to improve the reliability of power to the communications equipment.

Section 28.370 Wiring Methods and Materials

This was § 28.375 in the NPRM. This section requires all cable and wire to be insulated, copper, stranded, and appropriately sized. Solid wire conductors, such as are common in household applications, have proven to adversely affect the reliability of connections on board ships. The lack of flexibility offered by solid wire conductors is not compatible with the vibrations in the marine environment. However, stranded wire is not affected by the vibrations to the same degree.

Conductors are required to be sized so that the voltage drop caused by the conductors does not exceed 10 percent. Conductors must meet one of several recognized industry standards for material and construction. Metallic cable armor is required to be electrically continuous and grounded to the metal hull or the common ground point for a nonmetallic hull. Connections for conductors are required to be made only in fire retardant enclosures, such as junction boxes.

Section 28.375 Emergency Source of Electric Power

This was § 28.360 in the NPRM. This section requires vessels of more than 36 feet in length to have an emergency source of electrical power which is capable of supplying connected loads for at least 3 hours and which is physically separated from the main machinery space. This separation would help ensure that one casualty did not disable all sources of power.

Vessels of 79 feet (24 meters) in length or less are only required to have emergency lighting, navigation equipment, general alarm system, and communication equipment connected to the emergency source of power, provided the propulsion system, including control systems, and steering systems do not rely upon electrical power. Vessels of 36 feet (11 meters) in length or less are only required to provide an emergency source of power for communication equipment if flashlights are provided. The prime mover of a generator used as an emergency source of power must have a separate fuel supply.

Several comments noted that there was no description of which loads were required to be connected to the emergency source of power. The Coast Guard agrees that for the sake of consistency a list of the loads that are

considered to be necessary in an emergency should be specified. This section has been modified to require as a minimum the following loads to be connected to the emergency source of power:

(1) Navigation lights;
(2) Steering systems;
(3) Bilge pumps;
(4) Fire protection and detection systems, including fire pumps;
(5) Communication equipment;
(6) General alarm system; and
(7) Emergency lighting.

Several comments stated confusion concerning the requirements for an emergency source of power on vessels less than 36 feet in length, paragraph (c) of the NPRM. The intent was to have an emergency source of power for communication equipment in all cases, but not to require any other loads to be connected to the emergency source of power if flashlights are provided. This paragraph, now paragraph (d), has been redrafted for clarification.

Section 28.380 General Structural Fire Protection

To a large extent, fire protection can only be designed and built into a vessel. The requirements in this section are consistent with the Coast Guard's fire protection philosophy of limiting combustibles and containing a fire in the space of origin.

The requirement to insulate heated surfaces is a restatement of good marine practice from the standpoint of personnel safety and fire protection. ABYC P-1 is considered an appropriate standard for dry exhaust systems on vessels with combustible hulls, where special care must be taken to prevent ignition of the hull material.

Machinery and fuel tank spaces must be separated from accommodation spaces by a vapor tight boundary. Fires often originate in accommodation spaces. A fire in an accommodation space could easily spread to a fuel tank space or a machinery space with catastrophic results, unless vapor tight boundaries separate them. Another consideration is that flammable vapors could accumulate in accommodation spaces from adjoining machinery or fuel tank spaces and be accidentally ignited in the accommodation space.

Paint and flammable liquid stores present an obvious fire/explosion hazard since there is a concentrated fire load in the possible presence of flammable vapors. Lockers of steel or with a steel lining are required for the purpose of containing a fire within a paint or flammable liquid storage space. Several comments recommended relaxing this requirement to permit these liquids to be stored in a space lined in a metal other than steel. The Coast Guard disagrees since steel has excellent fire resistance properties, therefore this requirement remains unchanged.

Insulation in spaces where flammable vapors are present will absorb the vapors and in time become combustible regardless of the original fire resistance of the insulation. A vapor barrier is required as a covering for insulation in spaces containing flammable vapors, such as enginerooms and paint lockers, to prevent absorption of those vapors.

Nitrocellulose or noxious fume producing paints or lacquers are prohibited. There is a similar requirement on all inspected vessels.

Mattresses are required to meet the flammability standards applicable to all mattresses sold commercially in the U.S. and polyurethane mattresses are prohibited because of the toxic fumes generated if ignited.

Fiber reinforced plastic vessels are required to be constructed using fire retardant resin. This requirement permits the flexibility of using plastic hulls but still requires a minimum measure of fire protection for the highly combustible hull material.

A fire alarm system was proposed. This requirement has been removed since it would be redundant with the new requirements for a general alarm system contained in § 28.240.

Noncombustible surfaces are required within 3 feet of cooking appliances. Many comments expressed confusion by this requirement. Combustible material is allowed within 3 feet of cooking appliances so long as it is covered with a noncombustible material. The NPRM would have required combustible material to be sheathed in metal. However, this final rule has relaxed that proposal to accept sheathing in any noncombustible material. Some examples of this arrangement are wooden counters covered by tile or stainless steel sheathing. A similar requirement was proposed for small passenger vessels (CGD 85-080, RIN 2115-AC22, published January 30, 1989, 54 FR 4412.)

Section 28.385 Structural Fire Protection for Vessels That Operate with More Than 49 Individuals on Board

This section contains additional structural fire protection requirements based upon the Coast Guard's concern for the increased risk additional personnel on board a vessel present. Additional protection of accommodation spaces is provided by requiring bulkheads and decks of accommodation spaces which separate them from control stations, machinery spaces, cargo spaces, or service spaces to be constructed of noncombustible material. With more individuals on board there is greater likelihood of fire, and a greater degree of protection is required for accommodation spaces. This requirement will prevent major bulkheads from being constructed of wood. Additionally, major structural components, such as the hull, decks, and columns are required to be of steel.

The Committee pointed out the need for lightweight deck houses and superstructures. The additional weight of steel used to construct deckhouses and superstructures, as might be required from a fire protection standpoint, adversely affects stability (relatively high weight in a relatively high location) and thereby limits the cargo capacity. As a consequence, aluminum or other noncombustible material is permitted for the construction of deckhouses and superstructures. This provides a reasonable balance between fire protection and stability, and the economy issues raised by the Committee.

Section 28.390 Means of Escape

Escape from interior spaces, whether accommodation spaces or work spaces, is a key safety item and an integral facet of structural fire protection. There are numerous cases of individuals being trapped in interior spaces during fires or sudden capsizing. Noncombustible bulkheads play a key role in protecting escape routes, just as the arrangement of the escape routes does. This section contains requirements for means of escape. These requirements are intended to minimize the possibility of individuals being isolated in interior spaces in the event of an emergency.

Each space used on a regular basis and which is generally accessible to individuals is required to have two means of escape, one of which must provide a satisfactory route to weather. These means of escape may take the form of passageways, stairways, ladders, deck scuttles, or windows. A door, hatch, or scuttle used as a means of escape must be capable of being opened by one individual from either side in light or dark conditions and is required to open in the direction of expected escape. A deck scuttle used as a means of escape must be quick acting and arranged with a holdback to prevent it from closing unexpectedly while being used for egress. A provision has been added to require that watertight doors used as a means of escape must be of the quick acting type; this will help ensure rapid egress in an

emergency. Ladders, footholds, and handholds must be of rigid construction and suitable for emergency use. A window or windshield, suitably located and of sufficient size is permitted to serve as an emergency means of escape. This will provide a convenient means of ensuring a second means of escape at the operating station of small vessels.

Section 28.395 Embarkation Stations

This section requires each vessel to have at least one survival craft embarkation station to allow all individuals to board survival craft in the event the vessel must be abandoned. If work spaces or accommodation spaces are widely separated, an additional survival craft embarkation station must be provided. Since survival craft are the last resort for safe refuge in an emergency, adequate arrangements must be provided to allow crew and workers to quickly and safely board the survival craft.

Section 28.400 Radar and Depth Sounding Devices

This section was entitled "Navigation equipment" in the NPRM. Each vessel is required to be fitted with a radar and an echo depth sounding device. It is believed that nearly all of the existing vessels in this class are presently equipped with radar.

Many groundings can be prevented by the proper use of an echo sounding device. Commercial fishing industry vessels suffer from groundings more frequently than other classes of vessels, due in part to the areas in which they operate and the continual activity involved with fishing which can distract those responsible for navigation of the vessel. A grounding frequently leads to capsizing of the vessel with resultant peril to the individuals on board.

Section 28.405 Hydraulic Equipment

Coast Guard investigation of deaths and injuries on commercial fishing industry vessels show that hydraulic equipment is frequently involved. The Coast Guard and the Committee are concerned for the dangers presented by improper construction and operation of hydraulic equipment. This section contains design requirements for hydraulic systems to help ensure safe installations and operation. The requirements in this section are considered to address the type of risk contemplated in section 4502(b)(7) of the Act.

Piping systems are required to be designed with a burst pressure of 4 times the relief pressure of the required pressure relieving device. Several comments stated that this factor of safety was too conservative. The Coast Guard disagrees. A safety factor of 4 is commonly used in marine engineering piping systems and unfired pressure vessels.

Suitability of all materials in a piping system in relation to the fluid used and the operating temperature is also required.

Except for steering systems, controls for hydraulic equipment must be located where the equipment operator is able to have an unobstructed view of the work area. There have been many injuries and fatalities which could have been prevented if the operator knew that an individual was entangled or being crushed by hydraulically operated equipment. Controls for hydraulic equipment are required to be arranged so that equipment can be disengaged in an emergency, such as when an individual is caught in a line which is controlled hydraulically. This requirement also applies to automatically controlled hydraulic equipment. Further, hydraulic equipment is required to be equipped so that uncontrolled movement of the equipment is prevented upon loss of hydraulic pressure, such as in the case of a ruptured line. These requirements are intended to reduce the likelihood of injuries associated with operation of hydraulic equipment. These requirements are similar to recommendations in the Vessel Safety Manual published by the North Pacific Fishing Vessel Owners' Association. The manual also contains other valuable recommendations concerning hydraulic equipment.

Several comments objected to the limitations on the use of nonmetallic flexible hose in hydraulic systems. There is a great tendency to rely on such hoses as they are much easier to install, thereby reducing costs. However, nonmetallic flexible hose is subject to physical damage, rapid deterioration, and damage from fire exposure to a much greater extent than metallic pipe. The Coast Guard recognizes the desirability of installing nonmetallic flexible hoses in locations subject to vibration and other relative motion. Nonmetallic flexible hose in these locations should be limited to a length necessary to accomplish the isolation but should not be used as a means to simplify installation of hydraulic equipment. Consequently, "reasonable length" has been clarified to be not more than 30 inches (0.76 meters) in this final rule.

Section 28.410 Deck Rails, Lifeline, Storm Rails, and Hand Grabs

Deck rails and grab rails can reduce the chance of workers slipping or being washed overboard. The requirements in this section are similar to the requirements for inspected vessels.

This section specifies the minimum height and construction of deck rails, hand grabs, and bulwarks. Many comments expressed concern that rails would interfere with normal fishing operations. This is not the intent of this section. This section includes provisions to permit portable stanchions and lifelines as a substitute for fixed rails where fixed rails would impede fishing operations.

Subpart E—Stability

Approximately 70 percent of deaths involving commercial fishing industry vessels are related to stability. The Act recognized the hazards of improper design or operation as they relate to stability by requiring stability regulations for vessels which are built, or the physical characteristics of which are substantially altered in a manner that affects the vessel's stability, after December 31, 1989.

An examination of search and rescue and casualty data for 1987 and 1988 reveals that the majority of stability related cases can be attributed to watertight hull integrity problems or operational errors. The data clearly shows that unintentional flooding is involved in many major casualties. A one compartment flooding standard would prevent capsizing or sinking in most of these cases.

Casualty data for the years 1982 to 1987 shows that stability related casualty rates are independent of vessel length or vessel hull material. The data also shows that stability related casualties are independent of the geographic area of operation.

Section 28.500 Applicability

This subpart applies to all vessels built after the effective date of the regulations which are more than 79 feet (24 meters) in length. The Act specifies that each vessel built after or which is substantially altered after December 31, 1989, be subject to regulations for operational stability. Since regulations were not finalized by December 31, 1989, there have been no stability evaluations required by regulations prior to the effective date of these regulations.

Fifteen comments stated that the standards proposed in the NPRM, which were derived from the IMO criteria, were not appropriate for vessels less than 79 feet (24 meters) in length and

that more time was needed to evaluate and/or develop appropriate criteria. As explained previously, an SNPRM is under development which will address the stability criteria applicable to commercial fishing industry vessels which are less than 79 feet (24 meters) in length. Therefore, these rules will only apply to vessels more than 79 feet (24 meters) in length.

There is an exclusion in this section for a vessel that is issued a Load Line Certificate under 46 CFR subchapter E since the stability of a vessel is reviewed prior to issuance of a Load Line Certificate. The Coast Guard is considering formalizing the stability criteria for commercial fishing industry vessels which receive a Load Line Certificate. Currently, only certain fish tender vessels and fish processing vessels more than 79 feet in length are required to obtain a Load Line Certificate. The load line regulations require a stability analysis prior to issuance of a Load Line Certificate, but do not specify the stability criteria which must be satisfied. The Coast Guard has by policy established stability criteria for such vessels. However, the Coast Guard decided that the criteria imposed should be addressed in regulations. The SNPRM previously addressed may address the stability criteria that must be met by commercial fishing industry vessels prior to obtaining a Load Line Certificate.

Six comments suggested that the definition of the "built date" in paragraph (a) be more clearly defined. The Coast Guard agrees and has replaced "is built after" with "has its keel laid or is at a similar stage of construction on or after" throughout these rules.

Several comments pointed out that the Act was not intended to restrict the use of any fishing gear. They pointed out that the definition of "substantially altered" did not account for a vessel which changed fishing equipment to engage in different fisheries during different times of the year. This is a misinterpretation of the definition. This subject was discussed with the Committee and the definition in § 28.050 of the NPRM included the wording "Alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner *different than has previously been accomplished on the vessel*" (emphasis added). The intent of this wording was to allow routine changing of fishing gear to accommodate different fisheries, if that gear had been used on the vessel previously, i.e. before the effective date of the regulations. However, gear being used on a vessel for the first time would have been considered a substantial alteration.

The definition of "substantially altered" has been slightly modified to remove the reference to changes in fishing gear. To clarify the intent, the definition of "substantially altered" has been deleted from § 28.050 and the wording "* * * alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner different than has previously been accomplished on the vessel" has been added to this section to determine applicability. The intent is still to permit changes in equipment on a vessel if those changes have been made to the vessel before the effective date of these regulations without imposing any requirements for a stability analysis. However, changes to the vessel's equipment which have not been accomplished previously would trigger the requirements of this subpart.

Eleven comments suggested that paragraph (b) be reworded or that the definition of "substantially altered" be modified to indicate that the alteration would have to adversely affect the vessel's operating stability before stability criteria would have to be met. They argued that many vessel owners voluntarily modify their vessels to improve stability. If the modified vessel were required to comply with the stability criteria proposed, the voluntary modifications may not be made. It was felt that this would have a more detrimental effect overall than if only those vessels which were adversely affected were required to meet the proposed stability criteria.

The Coast Guard agrees in principle and has added § 28.501 to differentiate between changes which adversely affect a vessel's stability and those which do not adversely affect the vessel's stability.

If a substantial alteration does not adversely affect a vessel's stability the owner need only provide the operating personnel with revised stability instructions meeting the requirements of § 28.530(c) through (e).

If a substantial alteration does adversely affect the vessel's stability, a determination can be made by a qualified individual whether the vessel can be operated with the same level of safety after the alteration as before the alteration, i.e., the adverse effects can be compensated for by operational restrictions. If the adverse effects of alterations can be compensated for by operational restrictions, the owner need only provide the operating personnel with revised stability instructions which meet § 28.530(c) through (e).

In those instances where the adverse effects of alterations cannot be compensated for by operational restrictions in the stability instructions, the stability criteria in this part must be met.

The intent of these options is to permit alterations to a vessel which improve the stability or which have only slightly adverse effects on a vessel which can be compensated for by judicious operation of the vessel, as reflected in the stability instructions. The Coast Guard's position is that a large portion of small vessel stability related casualties can be avoided if the master or individual in charge of the vessel adheres to simple stability instructions which are developed by a qualified individual. This section will, therefore, require stability instructions for each substantial alteration. It is not the Coast Guard's intent or expectation that all substantial alterations will be compensated for by revised stability instructions without regard to the stability evaluations required by this subpart. The Coast Guard's position is that qualified individuals will recognize instances when the stability of a vessel has been so markedly changed by one large or many small alterations that simple changes in the stability instructions are not appropriate. The decision tree which follows as Figure 1 is intended to pictorially explain the requirements of §§ 28.500 and 28.501.

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SUMMARY OF SUBPART E APPLICABILITY

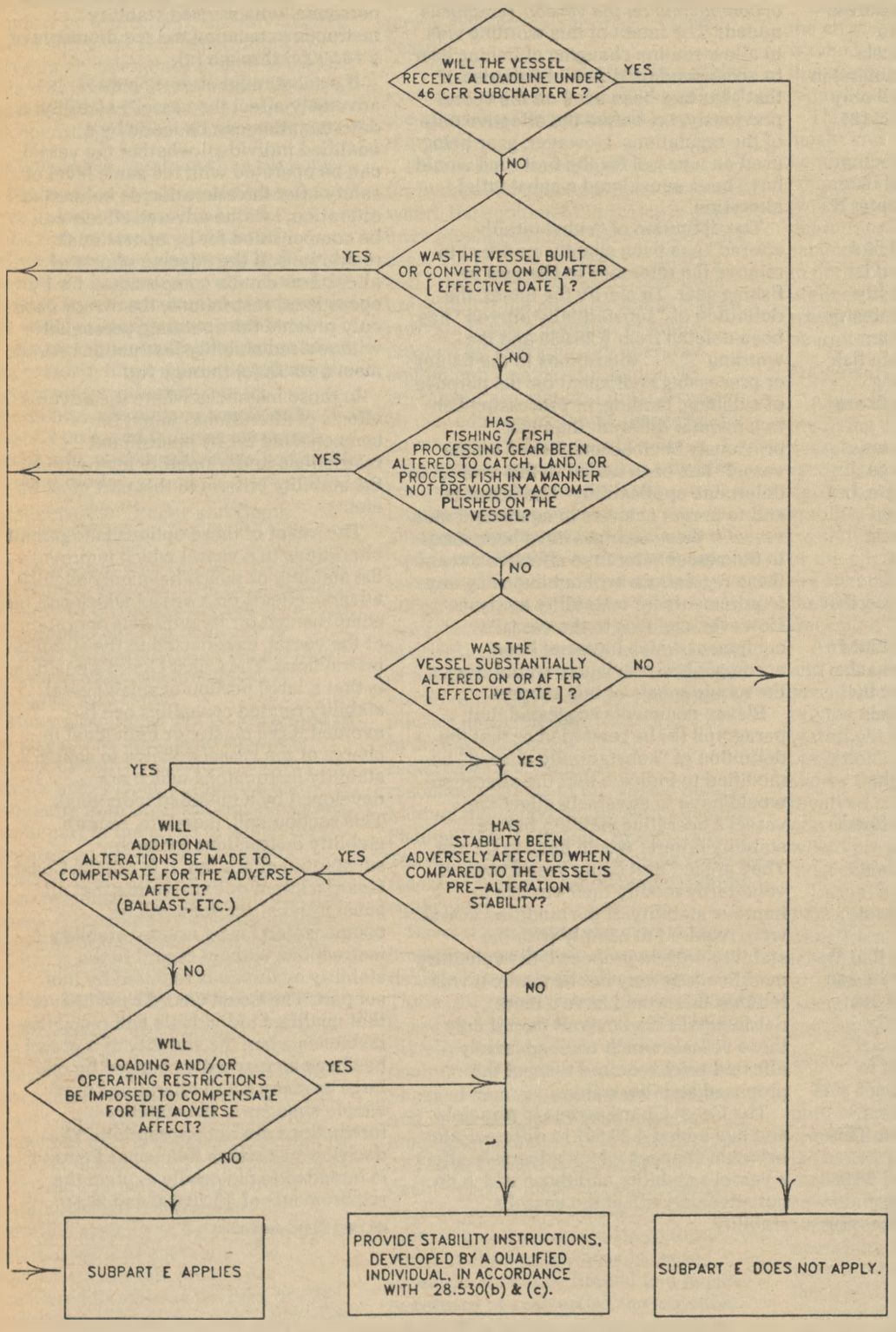


FIGURE 1

110a

Section 28.505 Vessel Owner's Responsibility

This section places on the owner of a commercial fishing industry vessel the burden of selecting a qualified individual to evaluate stability under this subpart. The owner would be responsible for maintaining calculations and test results from the stability evaluation in the event a vessel's compliance with the requirements of this subpart are questioned. It is expected that when selling a commercial fishing industry vessel an owner would transfer the calculations and test results to the purchaser, but such a requirement is beyond the scope of this rulemaking.

The Coast Guard proposed third party review of stability calculations to the Committee. After long discussions of the benefits and disadvantages of such an arrangement, the Committee recommended that no third party review of calculations be required, arguing that the cost of such verification did not justify the benefits. As a consequence of that recommendation, no third party verification of stability evaluations was proposed in the NPRM.

Several comments stated that such an arrangement should be made mandatory. The Coast Guard does not agree that such a requirement should be mandatory. An owner is free to retain a third party, such as the American Bureau of Shipping, to evaluate stability initially or to review the work of another qualified individual. Whether a third party is retained or not, the burden is on the owner to ensure that stability is evaluated in accordance with this subpart by a qualified individual.

Comments on this arrangement were specifically requested from vessel owners, designers, naval architects, and underwriters of primary insurance. Only four comments addressed this issue. Three comments stated that mandatory third party review was necessary and that without such a requirement, the regulations would be worthless. Their primary concern is that there will be no consistency in the interpretation of the regulations, thus, interpretation will be subject to the judgment of the "qualified individual." This in turn may lead to an undermining of the system. Additionally, the comments stated that the argument that the cost of a mandatory third party review would not justify the benefits was hollow and that the Coast Guard was sending a mixed message about the importance of the stability evaluations. On one hand the Coast Guard is requiring a stability evaluation, but on the other hand no one is required to review it for accuracy or methodology. One comment agreed with the concept of no third party review, but did not elaborate upon the reason.

After reviewing the comments and the arguments concerning mandatory third party review of stability evaluations, the Coast Guard has decided that no change to the proposal is warranted and that third party review will not be required.

Section 28.510 Definitions of Stability Terms

Ten comments addressed problems and questions dealing with use of the term "qualified individual." Some went so far as to recommend that the Coast Guard develop a system of certifying or licensing qualified individuals. A plan for such action is beyond the scope of this rulemaking and the Coast Guard disagrees that such a plan is needed. A definition of "qualified individual" has been added to clarify the Coast Guard's intent. A qualified individual is defined as an individual or organization with formal training and experience in matters dealing with naval architecture calculations. This would include an individual licensed as a Professional Engineer in Naval Architecture (available only in the states of Washington and Oregon) but would not be limited to such individuals. Classification societies such as the American Bureau of Shipping would meet the definition as an organization considered to be a qualified individual, as would many reputable naval architecture design firms throughout the country.

One comment suggested that instead of referring to § 170.050 and § 171.010 for the applicable stability related definitions, that the definitions be transferred into this section for clarity. The Coast Guard agrees and the applicable definitions, including those in proposed § 28.050 dealing with stability have been placed in this section.

A definition of "freeboard deck" has been added to clarify several rules which refer to the location of this deck.

Section 28.515 Submergence Test as an Alternative to Stability Calculations

This section contains a submergence test that would be accepted in lieu of the more complicated and possibly more expensive stability calculations. The submergence test is similar to the submergence test required for some recreational boats under 33 CFR part 183. Alternatively, a plate affixed to a vessel by the manufacturer under 33 CFR part 183 is also acceptable in lieu of calculations or the submergence test described in this section.

In the opinion of the Committee, a simple stability assessment is necessary so as not to place an economic hardship on the owners of small commercial fishing industry vessels.

Specific provisions are included for the weight expected from the loading of fish since this cargo can weigh more than the vessel itself on a small vessel. The Coast Guard believes that owners of many vessels under 25 feet (7.6 meters) in length will find the submergence test more suitable than stability calculations. The owner of a decked vessel may find calculations more suitable than this submergence test because of inability of the vessel to survive simultaneous flooding of the two largest compartments or because of the effort and expense necessary to protect the vessel to withstand submergence.

Nine comments stated that this test was impractical except for vessels which are produced in mass. Several of the comments suggested that the test should be limited to vessels less than 40 feet (12.2 meters), while several other of the comments stated that it would be economically infeasible to conduct this test. This test is merely an alternative to required calculations and tests and not the required method to evaluate the stability of a vessel. It is the owner's responsibility to decide which method of complying with these regulations is best suited to their vessel. The Coast Guard's position is that practical alternatives to conducting the normal inclining test should be offered. The submergence test has been successfully used in the past, therefore, the option to use the submergence test has been retained.

Sections 28.520 and 28.525

These sections are being reserved at this time.

Section 28.530 Stability Instructions for Operating Personnel

This section requires stability instructions for personnel who operate commercial fishing industry vessels to ensure that they can maintain loading so that the applicable stability criteria are met or to maintain the stability of a vessel which has been substantially altered. These stability instructions must be in a form readily usable by the master or the individual in charge of the vessel. For inspected vessels, the Coast Guard reviews stability information to ensure that the information provided to operating personnel is suitable and accurate. With no regulatory body or other third party examination of stability evaluations or stability instructions for commercial fishing industry vessels, the responsibility for determining the accuracy and detail of stability instructions rests with the vessel owner.

The necessary instructions will vary with vessel design, outfitting, fishing methods, and operating personnel experience and training. A list of items that must be considered for inclusion in the stability instructions is offered to help ensure needed information is provided. Much of the information in this list would not be necessary on many vessels.

The Committee recommended that the Coast Guard require pictorial guidance and a one page summary for each vessel. This could be appropriate for some vessels, but not for other vessels. Therefore, determining the best form for presenting the required information is left to the owner and the qualified individual working with the owner. The Coast Guard expects that for most vessels, the qualified individual and the owner will jointly decide on the content and form of the stability instructions necessary so that the operating personnel have the information necessary to properly load the vessel in the simplest format.

Seven comments suggested that in lieu of the operating instructions described in the regulations, short one or two page instructions describing load limits in simple terms be mounted under glass in the pilot house. They argued that when the vessel is at sea, the operating personnel are busiest and do not have time to do calculations, read/study loading curves or other applicable data. Additionally, the comments stated that many of these operating personnel are not comfortable with nor have they had the training to do these calculations. The comments argue that it is not feasible or reasonable to expect owners to do detailed calculations. The Coast Guard partially agrees with these arguments. The Coast Guard's position is that the owners must provide the required information in a format determined to be suitable for their operation, whether this is in the form of a Trim and Stability Booklet, Simplified Loading Diagram, Loading Instructions or any other appropriate and applicable format. Therefore, paragraphs (c) and (d) (paragraphs (a) and (b) in the NPRM) have been modified to clarify this.

Four comments suggested eliminating the words "intact and damage" from paragraph (a) (now paragraph (c)). The comments pointed out that the IMO stability criteria do not require vessels to meet damage stability unless they are over 100 meters (300 feet) in length and carrying 100 or more individuals.

The Coast Guard agrees with eliminating the words "intact and damage" but in their place inserting the word "applicable." This is because all vessels must meet intact stability requirements, but all vessels do not have to meet damage stability requirements. The Coast Guard has provided the option of obtaining and maintaining a Load Line Certificate in lieu of meeting damage stability design criteria. The reasoning for this is explained in the discussion of § 28.710.

Additional changes to this section include paragraph (b) which emphasizes that only a qualified individual may develop stability instructions. Stability is a complex topic and the expertise of a qualified individual is needed for development of the stability instructions, although the qualified individual is expected to work closely with the owner in these matters.

Paragraph (a) has been added to make the Coast Guard's intentions relating to stability instructions known to all individuals dealing with them. The Coast Guard's position is that major improvements in safety can be achieved by proper attention to the human element as they relate to stability. If masters or individuals in charge of vessels have a better appreciation for and understanding of the stability limits of their vessels as reflected in the stability instructions then there should be fewer stability related casualties. For this reason the Coast Guard has placed emphasis in these rules with promoting stability instructions on vessels.

The Marine Board of Investigation (Board) dealing with the sinking of the Aleutian Enterprise recommended that all vessels, including existing vessels, be required to have a stability placard detailing the vessels loading and operating limitations. This placard would be developed by a naval architect (qualified individual) after the vessel was tested and evaluated for watertight integrity and intact stability. The Board argued that section 4502(b)(7) of the Act, which reads "other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary (of Transportation) determines that a risk of serious injury exists that can be eliminated or mitigated by such equipment" is adequate authority for the stability placard. The Coast Guard disagrees with this interpretation of the authority for issuing such a requirement but strongly supports the concept of providing the master or individual in charge of the vessel with stability information and strongly encourages vessel owners to have the stability of their vessels evaluated by a qualified individual voluntarily.

Section 28.535 Inclining Test

This section requires an inclining test when accurate determination of a vessel's weight and locations of the centers of gravity is necessary to determine compliance with the applicable stability requirements. Provision is made for using less accurate procedures, such as a deadweight survey, when the stability of a vessel is sufficient to assume margins of safety in the stability criteria, and for using the stability test results for a vessel of the same arrangement, outfitting, and loading. NVIC 15–81, "Guidelines for Conducting Stability Tests," provides valuable information for those conducting inclining experiments.

Several comments expressed confusion concerning the criteria for a sister vessel. The Coast Guard feels that the term "undocumented weight change," as it applies to the "sister vessel" issue may have caused some confusion. An undocumented weight change is a result of a change in the design, outfitting, or equipment to a vessel that differs from one vessel to another without specific identification or quantization. The changes could be physical changes to the vessel structure or additions, deletions, or substitutions of material or equipment which would alter the displacement of the vessel and a vessel's vertical center of gravity (VCG) or longitudinal center of gravity (LCG). An example of a "documented weight change" is the addition of a known amount of permanent ballast added to a known location on one vessel that was not present on another vessel.

Four comments stated that the criteria which determines a "sister vessel" (undocumented weight difference between the two vessels is less than 3 percent of the lightweight displacement of the original vessel and the location of the Longitudinal Center of Gravity (LCG) differs less than 1 percent of the vessel's length) is too restrictive. They suggest that the Coast Guard change the 3 percent and 1 percent to 5 percent and 2 percent, respectively. The Coast Guard disagrees. The figures used are from long standing Coast Guard policy which has satisfactorily withstood the test of time, and is considered an applicable and an appropriate standard for all vessels.

Two comments stated that paragraph (d) was misleading. The comments expressed the opinion that by stating that the inclining test had to be done in accordance with § 170.185, that Coast Guard participation was inferred. This was not the Coast Guard's intent. The reference to § 170.185 was intended to provide guidance on inclining test preparations. Coast Guard presence is

not required at inclining tests or other stability tests.

Paragraph (d) has been modified to point out that an inclining test may be conducted using recently published ASTM F–1321–90, "Standard Guide for Conducting a Stability Test (Inclining and Lightweight Survey) to determine the Lightship Displacement and Centers of Gravity of a Vessel." It is expected that this standard will be proposed by the SNPRM for incorporation by reference in § 28.040. Additionally, reference to § 170.185 has been deleted.

Section 28.540 Free Surface

This section requires that consideration be given to the effects of liquids that shift within or between tanks as a vessel heels. These liquids have the virtual effect of raising the vertical center of gravity, thus reducing intact stability. The minimum number of slack tanks (tanks which are not full) to be considered and the method of selecting tanks to be considered is described in paragraph (a). Consideration of the effect of shifting liquids is necessary for all vessels as the liquids on board are continually changing and can have a detrimental effect, if not given proper attention. Methods of calculating the effect of shifting liquids vary in ease of use and accuracy. The normally used surface inertia method is relatively conservative but is easy to use. More accurate methods can be used by the owner or the qualified individual.

The effects on intact stability of shifting fluids are required to be addressed in stability evaluations reviewed by the Coast Guard for inspected vessels. Those who develop stability instructions for operating personnel on uninspected commercial fishing industry vessels are expected to limit the adverse effects of shifting liquids by including appropriate instructions in the stability instructions for operating personnel.

The Board investigating the Aleutian Enterprise casualty recommended that the weight and free surface effect of processing water and fish on the deck of fish processing vessels be included in the free surface calculation whenever a continuous uncontained flow is used inside the vessel during its normal operation. The Coast Guard agrees and has modified paragraph (a) to include such water in considering free surface effects.

The wording in this section has been further modified editorially to better convey the intent and incorporate current practice for inspected vessels.

Section 28.545 Intact Stability When Using Fishing Gear

This section requires an evaluation of heeling moments imposed on a vessel by fishing gear or lifting a weight over the side. A vessel with a certain lifting moment, as specified by a formula, would require further evaluation. This standard is similar to the lifting criterion of 46 CFR subchapter S and applies to only a small number of vessels due to the threshold for further evaluation. The requirements of this section are considered necessary since lifting weights adversely affects stability and can result in sudden capsizing, if done improperly.

Six comments suggested deleting this section entirely until a study was conducted, because they found it to be untested and too restrictive. The Coast Guard disagrees. This criteria is not untested, it is the basic lifting criteria found in 46 CFR subchapter S and NVIC 5–86. While this criteria will not apply to many vessels due to the limitation on the relative heeling moment for applicability, lifting weights can adversely affect stability and can result in capsizings, if not accounted for or if done improperly. Therefore, the Coast Guard feels that keeping this criteria is important and it has not been removed.

One comment stated that the proposed requirement was redundant for vessels which comply with the righting energy criteria of § 28.570 and therefore, suggested that this section be deleted and reserved for towing and lifting in trawling operations. The Coast Guard disagrees. The Coast Guard's position is that this section is appropriate in addition to the righting energy criteria.

One comment letter asked for clarification of the applicability of this section to drift fishermen. The comment noted that drift fishermen do not lift fish or fish products and nets over the side but instead over the stern. The criteria is generally for vessels that lift over the side, therefore, this section does not apply to drift fishermen which do not impose a transverse heeling moment when lifting.

One comment suggested changing paragraph (e) to take into account a vessel's ability to restrict the transverse movement via the use of sideboards, thus minimizing the heeling moment. This is particularly important on stern trawlers. The Coast Guard agrees and has modified paragraph (e) to include consideration of methods used to restrict the transverse movement of a suspended load.

Section 28.550 Icing

This section requires that the effects of ice on a vessel's structure be considered during the stability evaluation, if a vessel operates in the specified regions during the specified times. Icing of a vessel results in a topside weight addition and a consequent rise in the vertical center of gravity. This method of evaluation is recommended in NVIC 5–86 and is similar to the recognized international standard for commercial fishing industry vessels. Those concerned with the stability instructions for operating personnel must consider providing guidance on the meteorological conditions which favor icing and the best methods to minimize icing and the effects of icing in accordance with § 28.530(b)(9).

Two comments noted that the criteria used in the NPRM for ice loading differed from the criteria in NVIC 5–86 and suggested that the criteria in NVIC 5–86 be used. Four comments suggested that the criteria be consistent with the IMO standards. The Coast Guard partially agrees and has clarified paragraphs (b) and (c) and has changed paragraph (d) to more closely agree with the criteria in NVIC 5–86 and the IMO standards with the following exceptions: "Projected lateral area" will be changed to "projected horizontal and vertical areas" to make the intent clearer. Additionally, the calculation of the projected horizontal and vertical areas of rails, spars, and rigging with no sails, which is currently accounted for in NVIC 5–86 by increasing the calculated area by 5 percent and the static moments of the area by 10 percent; will be changed to "* * * increasing the calculated area by 15 percent." The Coast Guard's position is that this is a simpler calculation to make and the result will not be substantially different from that proposed.

Several comments, including those presented at the public hearings, recommended changes to the dates to shorten the time when icing should be considered a concern. The dates in the NPRM are the same dates that appear in NVIC 5–86. The Coast Guard's position is that if the slightest possibility exists for vessel icing to occur, the stability calculations should take that into consideration. Consequently, the dates in the final rule are unchanged from those proposed.

Section 28.555 Freeing Ports

This section contains requirements for the drainage of weather decks, to minimize the added weight and free

surface effect of boarding seas. Few vessels can meet the stability criteria unless boarding seas are assumed to be rapidly removed. This standard for freeing ports was suggested in NVIC 5–86 and is similar to that required by the American Bureau of Shipping for small vessels and to that of recognized international standards for commercial fishing industry vessels. A reduction in the required freeing port area is provided for vessels that operate exclusively on protected waters, where boarding seas are not expected.

Eight comments objected to the 50 percent increase of freeing port area for vessels with no sheer. They suggested that the increase be reduced from 50 percent to between 10 and 20 percent. The Coast Guard disagrees. The standards used are similar to those of 46 CFR 42.15–70 of the load line regulations and are considered appropriate for all vessel types.

Two comments noted that there were errors in the formulas when bulwarks are greater than 48 inches and less than 36 inches when compared to similar requirements in NVIC 5–86. This has been clarified by including units in the description of the variables. Additionally, the "m" in the formulas has been changed to "q" to avoid possible confusion with metric units.

Section 28.560 Watertight and Weathertight Integrity

This section requires watertight coamings and weathertight closures to prevent the inadvertent entry of sea water into the interior of a vessel. Coamings help ensure that water on deck will not normally enter openings in decks and bulkheads during normal operation.

Four comments suggested that all openings on the freeboard deck should be required to be fitted with watertight closures, and only those openings above the freeboard deck should be allowed to have the less tight weathertight enclosures. The Coast Guard disagrees. Weathertight closures are satisfactory on the freeboard deck because together with the required coaming heights, they should keep water from entering the spaces to which they are fitted and thus prevent downflooding. Required use of watertight closures in these locations is considered too costly and unnecessary.

Four comments suggested that the minimum coaming heights on the freeboard deck should be reduced to 18 inches in height and that on the first deck above the freeboard deck they should be reduced to 9 inches in height. The Coast Guard disagrees that these coaming heights offer adequate protection and these suggestions have not been adopted.

Two other comments suggested that the coaming requirements be changed to coincide with the current load line regulations and ABS Rules for Vessels Less Than 200 feet (61 meters) in Length. The Coast Guard agrees with these comments and has incorporated this criteria into these rules.

One comment suggested that the coaming height for a fish hold under constant attention when closure is not in place is 18 inches (0.46 meters) vice the recommended 6 inches (0.15 meters). The Coast Guard disagrees. While an 18 inch (0.46 meters) coaming would be less likely to permit water on deck to enter below deck spaces, normal fishing operations necessitate better access to holds than would be permitted by 18 inch (0.46 meters) coamings. A coaming 6 inches (0.15 meters) in height will provide an acceptable level of protection from downflooding when the hatch is under constant attention and will still allow access to holds below deck.

Several comments noted that the coaming height for vessels less than 79 feet (24 meters) in length would normally be expected to be less than for a vessel more than 79 feet (24 meters) in length. The Coast Guard agrees and notes that the coaming heights in the NPRM at § 28.560(b) (1) and (2) were inadvertently switched in drafting. These values have been corrected to show that for a vessel more than 79 feet (24 meters) in length, a minimum coaming height of 24 inches (0.61 meters) is required and for a vessel less than 79 feet (24 meters) in length, a minimum coaming height of 12 inches (0.30 meters) is required.

As previously discussed (§ 28.255), the sinking of the Aleutian Enterprise brought to light problems with the ability of vessels to keep water from entering processing spaces. On the Aleutian Enterprise the processing deck was fitted with several large chutes for discharge of processing water and fish debris. The chutes were fitted with flaps arranged similar to those found on freeing ports to keep water off of the deck. These type of flaps allow water to flow relatively unimpeded when flowing off of the vessel, and swing shut as water is forced onto the deck. However, these flaps were not effective in keeping water out of the processing space since they were not watertight or weathertight. When the vessel took on a list large enough to submerge these chutes water entered the processing space, contributing to the list. These type arrangements are not accepted by the load line regulations, 46 CFR subchapter E, for protecting the watertight integrity of the hull envelope. As a consequence, paragraph (g) has been added to require these type openings to be fitted with a means of closure that is at least weathertight. This means of closure must be operable from a location outside the space containing the opening. If such closures were fitted on the Aleutian Enterprise, the sinking may have been delayed or even prevented.

Section 28.565 Water on Deck

The requirements of this section are intended to guard against vessel capsizing due to water trapped on deck by bulwarks. This section is not applicable to a vessel that does not have bulwarks, since water cannot be trapped on deck. This standard was originally presented in NVIC 5–86 and is similar to recognized international standards for commercial fishing industry vessels.

Specific comments from designers were requested on alternative methods of analyzing the effect of large quantities on trapped water on deck.

Eight comments suggested that this section be deleted. They argued that the IMO criteria requires adequate stability to cope with water on deck and therefore, these proposed regulations are redundant and unnecessary. The Coast Guard disagrees. This technical standard is from NVIC 5–86 and is equivalent to the recognized international standards for fishing industry vessels.

One comment noted that the proposed regulation differs from the criteria in NVIC 5–86 which corresponds with the IMO standard and recommended that the proposed regulations be changed to agree with NVIC 5–86 and the IMO standard. The Coast Guard agrees, and has changed paragraph (c)(1) accordingly.

Two comments noted discrepancies in Figure 28.565. One comment noted that area "b" extends out to 60° (1.05 radians) when it should only extend out to 40° (0.70 radians) or the angle of downflooding, whichever is least. The other comment noted that the curve of heeling energy in this figure was confusing or misleading. The comment noted that a normal boat with approximately vertical bulwarks would have a curve of heeling energy that would remain positive out to roughly 90° (1.57 radians). The Coast Guard agrees and has modified this figure to better reflect the points made in these comments.

Section 28.570 Intact Righting Energy

This section contains the basic stability criteria for commercial fishing industry vessels and were developed internationally 20 years ago. They have been successfully applied in the United States to many different vessel types for many years. However, the range of positive stability proposed here, 60° (1.05 radians), is greater than that for other vessel types, which is 50° (0.87 radians). The larger range of positive stability is critical to the ability of a small vessel, such as many commercial fishing industry vessels, to remain upright in relatively large or breaking waves.

Twelve comments stated that the intact righting energy criteria was suitable for vessels more than 79 feet (24 meters) in length except for the requirement that the maximum righting arm must occur at an angle of heel not less than 25° (0.44 radians). They suggested that this requirement be deleted. Their reasoning was that when IMO established the requirement that the area under each righting arm curve be at least 5.6 foot-degrees (0.030 meter-radians) between 30° (0.52 radians) and 40° (0.70 radians) or the downflooding angle, whichever is less, this assured adequate stability at higher angles of heel. Therefore, requiring the maximum righting arm to occur at an angle of heel of not less than 25° (0.44 radians) is unnecessary and restrictive. The Coast Guard disagrees. IMO Resolution 168, dated November, 1968, established the criteria for intact stability of fishing vessels, and the criteria of maximum righting arm occurring at an angle of heel not less than 25° (0.44 radians) was not eliminated with the establishment of the requirement to have 5.6 foot-degrees (0.030 meter-radians) under the righting arm curve between 30° (0.52 radians) and 40° (0.70 radians) or the angle of downflooding. It was not IMO's intent to remove this requirement but, instead, to enhance the safety of the fishing vessels with the additional requirement.

The IMO standard encourages that the hydrostatic and stability curves be prepared on a design trim basis and that where the operating trim or the form and the arrangement of the ship are such that the change in trim has an appreciable effect on the righting arms, the change should be taken into account. The Coast Guard agrees that this is a good practice to establish, one which will enhance the safety of the fishing vessels. Therefore, paragraph (c) has been added, which requires that the vessel's hydrostatic properties be evaluated in the worst anticipated conditions of trim and be used when showing compliance with the stability criteria. Additionally, the righting arm values used in the stability criteria should be calculated using "free trim" instead of "fixed trim." This is required for inspected vessels required to meet the stability requirements of 46 CFR subchapter S.

Section 28.575 Severe Wind and Roll

This section requires evaluation of an intact stability criterion for fishing industry vessels to ensure that the wind area is not mismatched to the vessel's intact stability. It was recommended in NVIC 5–86, in a slightly different form, and is similar to a recognized international standard. This criterion evaluates the possibility of a vessel capsizing in a beam wind.

Ten comments suggested that this section be deleted and reserved for future study. The comments stated that the criteria was too complex and too cumbersome and felt that there was not enough experience with the applicability of this criterion to make a proper evaluation.

Three comments endorsed the proposed rule. They agreed that the criterion may be too complicated to accurately calculate, but they felt it to be necessary. The Coast Guard agrees. This rule represents the state of the art technical criteria for use in evaluating intact stability for commercial fishing industry vessels and is taken from NVIC 5–86. This rule incorporates minor changes to the recognized international standard. While the criterion may be complicated to calculate for a lay person, a "qualified individual" should have little problem performing the required calculations.

Four comments noted that there were errors in the formulas for the angle of roll to windward (A1 and C), when compared to the IMO requirements. The Coast Guard agrees and has corrected the formulas.

Section 28.580 Unintentional Flooding

This section contains requirements for evaluation of unintentional flooding from leaking hull penetrations or collision damage. Calculations are necessary for vessels more than 79 feet in length. The transverse extent of damage, 30 inches, is similar to the standards proposed in 46 CFR subchapter L—Offshore Supply Vessels including Liftboats (CGD 82–004, RIN 2115–AA77, published on May 9, 1989, 54 FR 20006) and international standards for Offshore Support Vessels, and was recommended in NVIC 5–86.

As an alternative to meeting the requirements of this section, a vessel which is not required by 46 CFR subchapter E—Load Line Regulations to obtain a Load Line Certificate may obtain and maintain a Load Line Certificate. A vessel assigned a load line is subject to the load line regulations until the Load Line Certificate is surrendered and the load line marks removed from the vessel, even if the load line is not required.

An examination of the hull is a prerequisite to obtaining a Load Line Certificate. This examination is for the purpose of determining the condition of the hull's watertightness and the material and arrangements which may affect that watertightness. A vessel must also be examined annually to ensure continued compliance with the conditions of assignment. Many cases of unintentional flooding are the result of leaking through-hull penetrations caused by poor maintenance or inappropriate material selection. Annual load line examinations should help alleviate these problems.

The NPRM proposed an annual examination by a surveyor of the American Bureau of Shipping, a similarly qualified organization, or an accepted organization in lieu of meeting paragraphs (c) through (g) of this section. While there were few comments either for or against the proposal, the Coast Guard's position is that this alternative may be impractical and may even be construed as an attempt to require fishing industry vessels to be "inspected." The Coast Guard has no authority to require inspection on most commercial fishing industry vessels. Only fish processing vessels 5000 gross tons or more and fish tender vessels 500 gross tons or more are required to be inspected.

Additionally, the question of whether commercial fishing industry vessels may voluntarily receive a Load Line Certificate has been raised by some individuals in the commercial fishing industry. Section 5102(c) of title 46 U.S. Code permits assignment of a load line to a vessel which is not required to obtain a load line.

Consequently, paragraph (i) of this section has been modified so that a Load Line Certificate may be substituted for the design requirements of this section for vessels not required to obtain a Load Line Certificate. The Coast Guard considers this to be a more realistic and practical alternative to the damage stability provisions of this section than contained in the NPRM.

Definitions of a "similarly qualified organization" and an "accepted organization" are contained in § 28.050.

Sixteen comments objected to the provisions in this section. Generally, the

comments stated the standards were not practical, were too restrictive, and were nearly impossible to meet. Additionally, they suggested that since these criteria are reserved by IMO for vessels over 100 meters (300 feet) and carrying 100 individuals, they should not be imposed on commercial fishing industry vessels. The Coast Guard disagrees. Casualty statistics for 1987 and 1988 reveal that the majority of stability related casualties can be attributed to problems with hull watertight integrity and that the one compartment flooding standard is necessary to prevent similar capsizings or sinkings. The Coast Guard has provided a reasonable alternative to the design criteria, an annual physical examination of the vessel.

Six comment letters requested clarification of the required location of a collision bulkhead on vessels with a bulbous bow. The Coast Guard has modified paragraph (b)(4) and added Figure 28.580 to clarify this.

One comment suggested that the minimum distance of the collision bulkhead from the forward perpendicular be specified. The Coast Guard disagrees. There is already a limiting factor for the maximum location of the collision bulkhead aft of the forward perpendicular, the vessel's ability to survive flooding of the space forward of the collision bulkhead.

Subpart F—Fish Processing Vessels

This subpart applies to all fish processing vessels in addition to the requirements of subparts A through E. The requirements in this subpart are in response to Sections 4502(f) and 4503 of the Act.

Section 28.600 Applicability

Fish processing vessels of over 5,000 gross tons are subject to inspection under the provisions of 46 U.S.C. 3301(11) and are not subject to this subchapter. All other fish processing vessels, as defined in § 28.050, are subject to this subpart.

Section 28.610 Examination and Certification of Compliance

This section requires each fish processing vessel to be examined for compliance with title 46 Code of Federal Regulations at least once every two years. Most of the requirements applicable to fish processing vessels less than 5000 gross tons are contained in these rules.

The examination must be performed by the American Bureau of Shipping, a similarly qualified organization, or an accepted organization. The organization performing the examination is required to provide the owner and the cognizant Coast Guard District Commander a copy of the signed certification letter, if the examination determines that the vessel is in compliance with title 46 Code of Federal Regulations. A copy of a certification letter is also required to be maintained on board the vessel.

Several comments expressed concern over the qualifications of marine surveyors and the lack of requirements for designation as a marine surveyor. While this is outside the scope of this rulemaking, examination of the definition of "accepted organization" in § 28.050 revealed that the intent of the proposed definition was not as clear. Consequently, this definition has been modified by specifically referring to surveyors of the organization as well as other members of the organization. An organization with members who are not surveyors may also be "accepted." The proposed definition could have been misconstrued to mean that all members of the accepted organization were required to be surveyors.

Section 28.620 Survey and Classification

This section requires each fish processing vessel built after or which undergoes a major conversion completed after July 27, 1990, to be classed by the American Bureau of Shipping or another organization determined by the Commandant to be similarly qualified. Fish processing vessels subject to this section must satisfactorily complete all required surveys and maintain certificates required by the classification society.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 28.040 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in § 28.040.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under **ADDRESSES**. The projected capital costs estimated for the 110,000 existing commercial fishing industry vessels to comply with these regulations is $94 million dollars. The annualized capital costs are estimated to be $16.4 million, with an additional $7.1 million annual operating and maintenance costs for a total annualized cost to the industry of $23.5 million.

The highest costs associated with these rule are for primary and secondary lifesaving equipment, e.g., survival craft and immersion suits. This equipment is expected to play the largest role in reducing the number of fatalities associated with casualties in the commercial fishing industry. Additionally, largely unquantifiable benefits are expected to accrue from the requirements for instruction and drills, while the costs are considered to be negligible.

The economic benefits of these regulations consist of vessel casualties prevented and a reduction in the number of injuries and fatalities that could be expected to occur without these regulations. The commercial fishing industry has a fatality rate estimated to be nearly 7 times the national industry average. The annual number of fatalities that may be prevented in response to the provisions of this proposal as they relate to existing commercial fishing industry vessels is estimated to be 29 per annum. These regulations could prevent up to 27 existing commercial fishing industry vessels from sinking annually. In addition, over 100 serious injuries could be avoided. The Coast Guard estimates the benefits of these regulations to be in excess of $50 million annually, or over two times the annualized cost to the industry.

Environment

The Coast Guard has considered the environmental impact of these final rules and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2. Commandant Instruction (COMDTINST) M16475.1B due to the inconsequential affects these rules are expected to have on the environment. A categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

Federalism

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

Small Entities

In accordance with the Regulatory Flexibility Act, a regulatory flexibility analysis which describes the impact of these regulations on small entities is

included in the regulatory evaluation available for inspection. An estimated 90–95 percent of the total number of commercial fishing industry vessels are independently owned. Even investor and company owned vessels are predominately associated with small businesses. Therefore, virtually the entire industry can be said to be composed of small businesses. Although the cost of the regulations is estimated to be minor when compared to the total annual revenues of the domestic industry of over $2.5 billion, compliance costs fall disproportionately on a number of individual classes of vessels.

The cost of these regulations is estimated to be minor with respect to virtually all small and large vessels operating in waters inside the Boundary Lines. The cost is estimated to be moderate for larger vessels operating outside of the Boundary Lines. Relative to the revenues of these vessels, the costs are considered to be negligible.

The economic impact of these regulations on smaller vessels that operate beyond the Boundary Lines may be significant. Examples of smaller vessels that operate beyond the Boundary Lines include New England lobster boats, swordfish vessels, bottom long-line vessels, offshore gillnetters, and virtually all of the small vessels that operate on the West Coast of the United States. The economic impact on smaller vessels will depend upon the safety equipment already on board these vessels, the area of operation, and whether the vessels are employed part time or full time in commercial fishing.

A 26 foot boat operating far offshore would incur capital costs of over $1,500. This is a significant amount to invest in a vessel worth $10,000 to $20,000. The largest impact would be to vessels that operate in the Northern waters. A small salmon gillnet boat in Alaska could have capital costs as high as $4,300 with annualized costs of $1,100 per boat. This is a relatively high economic burden for a vessel that may earn less than $10,000 annually from commercial fishing.

Part-time and seasonal operators represent a significant proportion of many fisheries. The cost of complying with the regulations is the same for part-time and seasonal operators as it is for full-time operators. Therefore, these regulations may lead some part-time and seasonal operators to discontinue commercial fishing activities.

Collection of Information

This rulemaking contains information collection requirements in the following sections of 46 CFR:

§ 28.080, § 28.090, § 28.135, § 28.165, § 28.530, § 28.580, § 28.710, § 28.720.

The information collection requirements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and approved under approval number 2115–0582.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Incorporation by reference, Lifesaving equipment, Main and auxiliary machinery, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, and Stability.

In consideration of the foregoing, chapter I of title 46, Code of Federal Regulations subchapter C, is amended by adding part 28 to read as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

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28.575 Severe wind and roll.
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28.610 Reserved.
28.620 Reserved.
28.630 Reserved.

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28.700 Applicability.
28.710 Examination and certification of compliance.
28.720 Survey and classification.

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. App. 1804; 49 CFR 1.46.

Subpart A—General Provisions

§ 28.10 Authority.

The regulations in this part are prescribed by the Commandant of the Coast Guard, pursuant to a delegation of authority by the Secretary of Transportation set forth in 49 CFR 1.46(b), to carry out the intent and purpose of 46 U.S.C. 3316 which authorizes the Secretary to rely on reports, documents, and certificates issued by the American Bureau of Shipping (ABS) or a similar United States classification society, or an agent of the ABS or similar society; sections 4502 and 4506 which require safety equipment and operational stability for certain vessels in the commercial fishing industry; section 6104 which requires the Secretary of Transportation to compile statistics concerning marine casualties compiled from vessel insurers and to delegate that authority to compile statistics from insurers to a qualified person; and section 10603 which requires seamen on commercial fishing industry vessels to give notice of illness, injury, or disability to their employer.

§ 28.20 OMB control numbers.

(a) This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This section complies with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) Display.

46 CFR part or section where identified or described	Current OMB control No.
§ 28.80	2115–0582
§ 28.90	2115–0582
§ 28.135	2115–0582
§ 28.165	2115–0582
§ 28.530	2115–0582
§ 28.710	2115–0582
§ 28.720	2115–0582

§ 28.30 Applicability.

(a) Except as provided in paragraph (b) of this section, this part is applicable to all United States flag vessels not inspected under this chapter that are commercial fishing, fish processing, or fish tender vessels. This includes vessels documented under the provisions of subchapter G of this chapter and vessels numbered by a State or the Coast Guard under the provisions of subchapter S of this chapter. Certain regulations in this part apply only to limited categories of vessels. Specific applicability statements are provided at the beginning of those regulations.

(b) This part does not apply to a small boat or auxiliary craft that is deployed from a fishing industry vessel for the purpose of handling fishing gear.

§ 28.40 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC)	
P.O. Box 747, 405 Headquarters Dr., Suite 3 Millersville, MD 21108–0747	
E–1–1972—Bonding of Direct Current Systems	28.345
E–8–1985—Alternating Current (AC) Electrical Systems on Boats	28.345
E–9–1981—Recommended Practices and Standards Covering Direct Current (DC) Electrical Systems on Boats	28.345
H–2–1989—Ventilation of Boats Using Gasoline	28.340
H–25–1986—Portable Fuel Systems for Flammable Liquids	28.335
H–33–1989—Diesel Fuel Systems	28.335
P–1–1986—Installation of Exhaust Systems for Propulsion and Auxiliary Engines	28.360
International Maritime Organization (IMO)	
Publications Section, 4 Albert Embankment, London SE17SR, England	
Resolution A.658(16) "Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances", dated November 1989	28.135
National Fire Protection Association (NFPA)	
60 Batterymarch Park, Quincy, MA 02269	
70–1990—National Electrical Code (also known as ANSI/NFPA 70–1990)	28.350; 28.370
302–1989—Pleasure and Commercial Motor Craft	28.335; 28.340; 28.345
17–1985—Dry Chemical Extinguishing Systems	28.330
17A–1986—Wet Chemical Extinguishing Systems	28.330
Society of Automotive Engineers (SAE)	
400 Commonwealth Drive, Warrendale, PA 15096	
SAE J 1942–1989—Hose and Hose Assemblies for Marine Applications	28.405
Underwriters Laboratories, Inc. (UL)	
333 Pfingsten Rd., Northbrook, IL 60062	
UL 217–1985—Single and Multiple Station Smoke Detectors	28.325
UL 710–1990—Exhaust Hoods for Commercial Cooking Equipment	28.330

§ 28.50 Definition of terms used in this part.

Accepted organization means an organization which has been designated by the Commandant for the purpose of examining commercial fishing industry vessels under the provisions of § 28.073.

Accommodations include:

(1) A messroom.
(2) A lounge.
(3) A sitting area.
(4) A recreation room.
(5) Quarters.
(6) A toilet space.
(7) A shower room.

(8) A galley.
(9) Berthing facilities.
(10) A clothing changing room.

Approved means approved by the Commandant unless otherwise stated.

Boundary Lines means the lines set forth in 46 CFR part 7. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets and rivers. In some areas, they are along the 12 mile line which marks the seaward limits of the contiguous zone and in other areas they come ashore.

Coastal waters means coastal waters as defined in 33 CFR 175.105.

Cold Water means water where the monthly mean low water temperature is normally 59 °F (15 °C) or less.

Commandant means the Commandant of the Coast Guard or an authorized representative of the Commandant of the Coast Guard.

Commercial fishing industry vessel means a fishing vessel, fish tender vessel, or a fish processing vessel.

Currently corrected means corrected with changes contained in all Notice to Mariners published by the Defense Mapping Agency Hydrographic/Topographic Center.

Custom engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed for a specific space requiring individual calculations for the extinguishing agent volume, flow rate, and piping, among other factors, for the space.

Documented vessel means a vessel for which a Certificate of Documentation has been issued under the provisions of 46 CFR part 67.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

Fish processing vessel means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

Fish tender vessel means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing or fish tender vessel or a fish processing facility.

Fishing vessel means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Gasoline as used in this part includes gasoline-alcohol blends and any other fuel having a flash point of 110 °F (43.3 °C) or lower.

Length means the length listed on the vessel's Certificate of Documentation or Certificate of Number.

Major conversion means a conversion of a vessel that—

(1) Substantially changes the dimensions or carrying capacity of the vessel;

(2) Changes the type of the vessel;

(3) Substantially prolongs the life of the vessel; or

(4) Otherwise so changes the vessel that it is essentially a new vessel, as determined by the Commandant.

Mile means a nautical mile.

North Pacific Area means all waters of the North Pacific Ocean and Bering Sea north of 48°30′ north latitude including waters in contiguous bays, inlets, rivers, and sounds.

Officer in Charge, Marine Inspection (OCMI) means an officer of the Coast Guard who commands a Marine Inspection Zone described in 33 CFR part 3 or an authorized representative of that officer.

Open to the atmosphere means a space that has at least 15 square inches (9680 square millimeters) of open area directly exposed to the atmosphere for each cubic foot (0.0283 cubic meters) of net volume of the space.

Operating station means the principal steering station on the vessel from which the vessel is normally navigated.

Pre-engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed and tested to be suitable for installation as a complete unit in a space of a set volume, without modification, regardless of the vessel on which installed.

Similarly qualified organization means an organization which has been designated by the Commandant for the purpose of classing or examining commercial fishing industry vessels under the provisions of § 28.76.

Switchboard means an electrical panel which receives power from a generator, battery, or other electrical power source and distributes power directly or indirectly to all equipment supplied by the power source.

Warm water means water where the monthly mean low water temperature is normally more than 59° F. (15° C.).

Watertight means designed and constructed to withstand a static head of water without any leakage, except that "watertight" for the purposes of electrical equipment means enclosed so that equipment does not leak when a stream of water from a hose with a nozzle one inch (25.4 millimeters) in diameter that delivers at least 65 gallons (246 liters) per minute is played on the enclosure from any direction from a distance of 10 feet (3 meters) for five minutes.

Weather deck means the uppermost deck exposed to the weather to which a weathertight sideshell extends.

Weathertight means that water will not penetrate into the unit in any sea condition.

§ 28.70 Approved equipment and material.

(a) Equipment and material that is required by this subchapter to be approved or of an approved type, must have been manufactured and approved in accordance with the design and testing requirements in Subchapter Q of this chapter or as otherwise specified by the Commandant.

(b) Notice regarding equipment approvals is published in the **Federal Register**. Coast Guard publication COMDTINST M16714.3, "Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws," lists approved equipment by type and manufacturer. COMDTINST M16714.3 may be obtained from the Superintendent of Documents U.S. Government Printing Office, Washington, DC 20402. Each OCMI may be contacted for information concerning approved equipment.

§ 28.73 Accepted organizations.

An organization desiring to be designated by the Commandant as an accepted organization must request such designation in writing. As a minimum the organization must verify that it is an organization—

(a) With a Code of Ethics;

(b) Whose surveyors are familiar with the requirements of this chapter related to commercial fishing industry vessels;

(c) Whose surveyors are familiar with the operations and equipment on board commercial fishing industry vessels;

(d) Whose only interest in the fishing industry is in ensuring the safety of commercial fishing industry vessels and surveying commercial fishing industry vessels;

(e) That has grievance procedures;

(f) That has procedures for accepting and terminating membership of an individual, including minimum professional qualifications for surveyors;

(g) That maintains a roster of present and past accepted members and surveyors; and

(h) That has an Apprentice/Associate program for surveyors.

§ 28.76 Similarly qualified organizations.

An organization desiring to be designated by the Commandant as a similarly qualified organization must

request such designation in writing. As a minimum the organization must verify that it—

(a) Publishes standards for vessel design and construction which are as widely available as and which are of similar content to the standards published by the ABS;

(b) Performs periodic surveys in a wide range of localities during and after construction to ensure compliance with published standards, including drydock examinations, in a manner similar to the ABS;

(c) Issues certificates testifying to compliance with the published standards;

(d) Has as its primary concern the survey and classification of vessels;

(e) Has no interest in owning or operating fishing, fish processing, or fish tender vessels; and

(f) Maintains records of surveys and makes such records available to the Coast Guard upon request in a manner similar to the ABS.

§ 28.80 Report of casualty.

(a) Except for a casualty which is required to be reported to the Coast Guard on Form CG 2692 in accordance with part 4 of this chapter, the owner, agent, operator, master, or individual in charge of a vessel involved in a casualty must submit a report in accordance with paragraph (c) of this section, as soon as possible after the casualty, to the underwriter of primary insurance for the vessel or to an organization listed in paragraph (d) of this section whenever the casualty involves any of the following.

(1) Loss of life.

(2) An injury to an individual that causes that individual to remain incapacitated for a period in excess of 72 hours.

(3) Loss of a vessel.

(4) Damage to or by a vessel, its cargo, apparel or gear, except for fishing gear while not on board a vessel, or that impairs the seaworthiness of the vessel, or that is initially estimated at $2,500.00 or more.

(b) Each underwriter of primary insurance for a commercial fishing industry vessel must submit a report of each casualty involving that vessel to an organization listed in paragraph (d) of this section within 90 days of receiving notice of the casualty and whenever it pays a claim resulting from the casualty. Initial reports must be in accordance with paragraph (c) of this section. Subsequent reports must contain sufficient information to identify the casualty and any new or corrected casualty data.

(c) Each report of casualty must include the following information:

(1) The name and address of the vessel owner and vessel operator, if different than the vessel owner;

(2) The name and address of the underwriter of primary insurance for the vessel;

(3) The name, registry number, call sign, gross tonnage, year of build, length, and hull material of the vessel;

(4) The date, location, primary cause, and nature of the casualty;

(5) The specific fishery, intended catch, and length of fishery opening when applicable;

(6) The date that the casualty was reported to the underwriter of primary insurance for the vessel, or to an organization acceptable to the Commandant;

(7) The activity of the vessel at the time of the casualty;

(8) The weather conditions at the time of the casualty, if the weather caused or contributed to the cause of the casualty;

(9) The damages to or by the vessel, its apparel, gear, or cargo;

(10) The monetary amounts paid for damages;

(11) The name, birth date, social security number, address, job title, length of disability, activity at the time of injury, type of injury, and medical treatment required for each individual incapacitated for more than 72 hours, or deceased as a result of the casualty;

(12) The name, registry number, and call sign of every other vessel involved in the casualty; and

(13) The monetary amount paid for an injury or a death.

(d) A casualty to a commercial fishing industry vessel must be reported to an organization that has knowledge and experience in the collection and processing of statistical insurance data and that has been accepted by the Commandant to receive and process casualty data under this part. The Commandant has accepted for this purpose:

(1) Marine Index Bureau, Inc., P.O. Box 1964, New York, NY 10156–0612.

(2) Reserved.

Note: The Coast Guard intends to treat information collected under this section from underwriters of primary insurance as exempt from disclosure under the Freedom of Information Act because it is commercial and financial information which, if disclosed, would be likely to cause substantial harm to the competitive position of the underwriter.

§ 28.90 Report of injury.

Each individual employed on a commercial fishing industry vessel must notify the master, individual in charge of the vessel, or other agent of the employer of each illness, disability, or injury suffered while in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose.

§ 28.95 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with part 1, subpart 1.03 of this chapter.

Subpart B—Requirements For All Vessels

§ 28.100 Applicability.

Each commercial fishing industry vessel must meet the requirements of this subpart, in addition to the requirements of parts 24, 25, and 26 of this chapter.

§ 28.105 Lifesaving equipment—general requirements.

(a) In addition to the requirements of this subpart, each commercial fishing industry vessel must comply with the requirements of part 25 subpart 25.25 of this chapter.

(b) Except as provided in § 28.120(d), each item of lifesaving equipment carried on board a vessel to meet the requirements of this part must be approved by the Commandant. Equipment for personal use which is not required by this part need not be approved by the Commandant.

§ 28.110 Life preservers or other personal flotation devices.

(a) Except as provided by § 28.305 of this chapter, after November 15, 1991, each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device of the proper size for each individual on board as specified in table 28.110 and part 25, subpart 25.25 of this chapter. Notwithstanding the provisions of paragraphs (c) and (d) of § 25.25–1 of this chapter, each commercial fishing industry vessel propelled by sail or a manned barge employed in commercial fishing activities must meet the requirements of this paragraph.

(b) Each wearable personal flotation device must be stowed so that it is readily accessible to the individual for whom it is intended, from both the individual's normal work station and berthing area. If there is no location accessible to both the work station and the berthing area, an appropriate device must be stowed in both locations.

TABLE 28.110.—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS

Applicable waters	Vessel type	Devices required	Other regulations
Seaward of the Boundary Line and North of 32° N; or South of 32° S; or Great Lakes.	Documented vessels	Immersion suit or exposure suit [1]	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Coastal waters or beyond *cold* waters (includes Great Lakes).	All vessels	do [1]	Do.
All other waters	40 feet (12.2 meters) or more in length	Type I, Type V commercial hybrid, immersion suit, or exposure suit [2].	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.
Do	Less than 40 feet (12.2 meters) in length.	Type I, Type II, Type III, Type V commercial hybrid immersion suit, or exposure suit [2].	Do.

[1] Until September 1, 1995, individuals weighing less than 44 pounds (196 Newtons) may substitute an approved personal flotation device of the appropriate size for a required immersion suit or exposure suit.

[2] Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval label.

§ 28.115 Ring life buoys.

(a) Except as provided in paragraph (b) of this section and § 28.305, after November 15, 1991, each vessel must be equipped with a throwable flotation device or a ring life buoy as specified in table 28.115. If the vessel is equipped with a ring life buoy, at least one ring life buoy must be equipped with a line which is at least:

(1) 60 feet (18.3 meters) in length for a vessel less than 65 feet (19.8 meters) in length; or

(2) 90 feet (27.4 meters) in length for a vessel 65 feet (19.8 meters) or more in length.

(b) For each vessel less than 65 feet (19.8 meters) in length, an approved 20 inch (0.51 meters) or larger ring life buoy which is in serviceable condition and which was installed on board before September 15, 1991, may be used to meet the requirements of paragraph (a) of this section.

TABLE 28.115.—THROWABLE FLOTATION DEVICES

Vessel length	Devices required
Less than 16 feet (4.9 meters).	None.
16 feet (4.9 meters) or more, but less than 26 feet (7.9 meters).	1 buoyant cushion, or ring life buoy (Type IV PFD) meters).
26 feet (7.9 meters) or more, but less than 65 feet (19.8 meters).	1 ring life buoy approval number starting with 160.009 or 160.050; orange; at least 24 inch (0.61 meters) size.
65 feet (19.8 meters) or more.	3 ring life buoys, approval number 160.50; orange; at least 24 inch (0.61 meters) size.

Note: Certain Type V PFDs are approved for use in substitution for Type IV PFDs, when used in accordance with the conditions stated in the Coast Guard approval label.

§ 28.120 Survival craft.

(a) Except as provided in paragraphs (b) and (d) through (h) of this section, each vessel must carry the survival craft specified in table 28.120(a), table 28.120(b), or table 28.120(c), as appropriate for the vessel, in an aggregate capacity to accommodate the total number of individuals on board.

(b) The requirements of this section do not apply to a vessel with less than 4 individuals on board which operates within 12 miles of the coastline.

(c) Except as provided by § 28.305, compliance dates for the requirements for the number and type of survival craft in tables 28.120(a), 28.120(b), and 28.120(c) are:

(1) For a documented vessel that operates in the North Pacific Area, September 1, 1992;

(2) For a documented vessel that operates in the Great Lakes or in the Atlantic Ocean north and east of a line drawn at a bearing 150° true from Watch Hill Light, Rhode Island, September 1, 1993;

(3) For each other documented vessel, September 1, 1994; and

(4) For each other vessel, September 1, 1995.

(d) Each survival craft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements of this section provided the survival craft is:

(1) Of the same type as required in tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type; and

(2) Maintained in good and serviceable condition.

(e) Each inflatable liferaft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements for an approved inflatable liferaft, provided the existing liferaft is maintained in good and serviceable condition as required by table 28.140, and it is equipped with the equipment pack required by tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type. Where no equipment pack is specified in tables 28.120(a), 28.120(b), or 28.120(c), a coastal service pack is required.

(f) An approved lifeboat may be substituted for any survival craft required by this section, provided it is arranged and equipped in accordance with part 94 of this chapter.

(g) The capacity of an auxiliary craft carried on board a vessel which is integral to and necessary for normal fishing operations will satisfy the requirements of this section for survival craft, except for an inflatable liferaft, provided the craft is readily accessible during an emergency and is capable of safely holding all individuals on board the vessel. If the auxiliary craft is equipped with a Coast Guard required capacity plate, the boat must not be loaded so as to exceed the rated capacity.

(h) A vessel less than 36 feet in length which meets the positive flotation provisions of 33 CFR part 183 is exempt from the requirement for survival craft in paragraph (a) of this section for operation on the following waters:

(1) Within 12 miles of the coastline, any waters; and

(2) Rivers.

TABLE 28.120 (a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline	All	Inflatable liferaft with SOLAS A pack.
Between 20-50 miles of coastline, cold waters	All	Inflatable liferaft with SOLAS B pack.

TABLE 28.120 (a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS—Continued

Area	Vessel type	Survival craft required
Between 20–50 miles, of coastline, warm waters	All	Inflatable liferaft.
Beyond Boundary Line, within 20 miles of coastline, cold waters	All	Inflatable liferaft.
Beyond Boundary Line within 20 miles of coastline, warm waters.	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	None.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All	None.
Great Lakes, cold waters	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 20 miles of coastline	All	Inflatable buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, cold waters	All	Inflatable buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters.	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.	36 feet (11 meters) or more in length	Buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	None.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All	None.
Great Lakes, cold waters	All	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(c).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline	All	Inflatable liferaft with SOLAS A pack.
Between 20-50 miles of coastline, cold waters	All	Inflatable liferaft with SOLAS B pack.
Between 20-50 miles of coastline, warm waters	All	Inflatable liferaft.
Beyond Boundary Line, within 20 miles of coastline, cold water	All	Inflatable liferaft.
Beyond Boundary Line within 20 miles of coastline, warm waters.	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.	36 feet 11 (meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	None.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All	None.
Great Lakes, cold waters	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

§ 28.125 Stowage of survival craft.

(a) Each inflatable liferaft required to be equipped with a SOLAS A or a SOLAS B equipment pack must be stowed so as to float free and automatically inflate in the event the vessel sinks.

(b) Each inflatable liferaft, inflatable buoyant apparatus, and any auxiliary craft used in their place, must be kept readily accessible for launching or be stowed so as to float free in the event the vessel sinks.

(c) Each hydrostatic release unit used in a float-free arrangement must be

approved under part 160, subpart 160.062 of this chapter.

(d) Each float-free link used with a buoyant apparatus or with a life float must be certified to meet part 160, subpart 160.073 of this chapter.

§ 28.130 Survival craft equipment.

(a) *General.* Each item of survival craft equipment must be of good quality, effective for the purpose it is intended to serve, and secured to the craft.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

(1) Coastal Service;

(2) SOLAS B Pack (formerly "Limited Service"); or

(3) SOLAS A Pack (formerly "Ocean Service").

(c) Each life float and buoyant apparatus must be fitted with a lifeline, pendants, a painter, and a floating electric water light approved under part 161 subpart 161.010 of this chapter.

(d) *Other survival craft.* A vessel must not carry survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, or buoyant apparatus, such as lifeboats or rigid liferafts, unless the survival craft and launching equipment comply with the requirements for installation, arrangement, equipment, and maintenance contained in 46 CFR part 94.

§ 28.135 Lifesaving equipment markings.

(a) Except as provided in paragraph (d) of this section, after September 1, 1992, lifesaving equipment carried aboard a vessel pursuant to the requirements of this subpart of part 25, subpart 25.25 of this chapter must be marked as specified in table 28.135.

(b) Lettering used in lifesaving equipment markings must be in block capital letters.

(c) Retroreflective markings required by this section must be with material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution A.658(16).

(d) A wearable personal flotation device must be marked with the name of either the vessel, the owner of the device, or the individual to whom it is assigned.

TABLE 28.135.—LIFESAVING EQUIPMENT MARKINGS

Item	Markings required, name of vessel	Retroreflective material
Wearable personal flotation device (Type I, II, III, or wearable Type V); Immersion suit or exposure suit.	See § 28.135(d)	Type I or Type II.
Ring life buoy	X	Type II.
Inflatable liferaft	See note	See note.
Inflatable buoyant apparatus	See note	See note.
Life float	X	Type II.
Buoyant apparatus	X	Type II.
Auxiliary craft	X	Type II.
EPIRB	X	Type II.

Note: No marking other than that provided by the manufacturer and the servicing facility is required.

§ 28.140 Operational readiness, maintenance, and inspection of lifesaving equipment.

(a) The master or individual in charge of a vessel must ensure that each item of lifesaving equipment must be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is operated.

(b) Except for an inflatable liferaft or an inflatable buoyant apparatus less than two years of age, each item of lifesaving equipment, including unapproved equipment, must be maintained and inspected in accordance with:

(1) Table 28.140;

(2) The servicing procedure under the subpart of this chapter applicable to the item's approval; and

(3) The manufacturer's guidelines.

(c) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant.

(d) An escape route from a space where an individual may be employed or an accommodation space must not be obstructed.

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT

Item	Interval		Regulation
	Monthly	Annually	
Inflatable wearable personal flotation device (Type V commercial hybrid).		Servicing	28.140
Personal flotation devices, exposure suits and immersion suits.		Inspect, clean and repair as necessary	28.140
Buoyant apparatus and life floats		Inspect, clean and repair as necessary	28.140
Inflatable liferaft		Servicing	28.140
Inflatable buoyant apparatus		Servicing	28.140
Hydrostatis release		Servicing	28.140
Disposable hydrostatic release		Replace on or before expiration date	28.140
Undated batteries		Replace	28.140
Dated batteries [1] and other items		Replace on or before expiration date	25.26–5, 28.140
EPIRB	Test		25.26–5

[1] Water activated batteries must be replaced whenever they are used.

§ 28.145 Distress signals.

Except as provided by 28.305, after November 15, 1991, each vessel must be equipped with the distress signals specified in table 28.145.

TABLE 28.145.—DISTRESS SIGNALS

Area	Devices required
Ocean, more than 50 miles from coastline.	3 parachute flares, approval series 46 CFR 160.136; plus 6 hand flares, approval series 46 CFR 160.121; plus 3 smoke signals, approval series 46 CFR 160.122.
Ocean, 3–50 miles from the coastline; or more than 3 miles from the coastline on the Great Lakes.	3 parachute flares, approval series 46 CFR 160.136, or 160.036; plus 6 hand flares, approval series 46 CFR 160.121 or 160.021; plus 3 smoke signals, approval series 46 CFR 160.122, 160.022, or 160.037.
Coastal waters, excluding the Great Lakes; or within 3 miles of the coastline on the Great Lakes.	Night visual distress signals consisting of one electric distress light, approval series 46 CFR 161.013 or 3 approved flares; plus Day visual distress signals consisting of one distress flag, approval series 46 CFR 160.072, or 3 approved flares, or 3 approved smoke signals.[1]

[1] If flares are carried, the same 3 flares may be counted toward meeting both the day and night requirement.

§ 28.150 Emergency position indicating radio beacons (EPIRBs).

Each vessel must be equipped with an emergency position indicating radio beacon (EPIRB) as required by 46 CFR part 25, subpart 25.26.

Note: Each vessel which uses radio communication equipment must have a Ship Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

§ 28.155 Excess fire detection and protection equipment.

Installation of fire detection and protection equipment in excess of that required by the regulations in this subchapter is permitted provided that the excess equipment does not endanger the vessel or individuals on board in any way. The excess equipment must, at a minimum, be listed and labeled by an independent, nationally recognized testing laboratory and be in accordance with an appropriate industry standard for design, installation, testing, and maintenance.

§ 28.160 Portable fire extinguishers.

(a) Each vessel must meet the requirements of part 25, subpart 25.30 of this chapter.

(b) Each vessel 65 feet (19.8 meters) or more in length must be equipped with the minimum number, location, and type of portable fire extinguishers specified in table 28.160.

TABLE 28.160.—PORTABLE FIRE EXTINGUISHERS FOR VESSELS 65 FEET (19.8 METERS) OR MORE IN LENGTH

Space	Classification	Quantity and location
Safety areas, communicating corridors	A–II	1 in each main corridor not more than 150 feet (49.2 meters) apart. (May be located in stairways.)
Pilothouse	C–I	2 in vicinity of exit.
Service spaces, galleys	B–II or C–II	1 for each 2,500 square feet (269.1 sq. meters) or fraction thereof suitable for hazards involved.
Paint lockers	B–II	1 outside space in vicinity of exit.
Accessible baggage and storerooms	A–II	1 for each 2,500 square feet (269.1 sq. meters) or fraction thereof located in the : vicinity of exits, either inside or outside the spaces.
Work shops and similar spaces	A–II	1 outside the space in vicinity of exit.
Machinery spaces; internal combustion propelling machinery.	B–II	1 for each 1,000 brake horsepower or fraction thereof but not less than 2 nor more than 6.
Electric propulsion motors or generator unit of open type	C–II	1 for each propulsion motor generator unit.
Auxiliary spaces	B–II	1 outside the space in the vicinity of exit.
Internal combustion machinery	B–II	1 outside the space in the vicinity of exit.
Electric emergency motors or generators	C–II	1 outside the space in the vicinity of exit.

§ 28.165 Injury placard.

Each vessel must have posted in a highly visible location accessible to the crew a placard measuring at least 5 inches by 7 inches (127 millimeters by 178 millimeters) which reads:

Notice

Report All Injuries

United States law, 46 United States Code 10603, requires each seaman on a fishing vessel, fish processing vessel, or fish tender vessel to notify the master or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose.

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals On Board

§ 28.200 Applicability.

Each documented commercial fishing industry vessel that operates beyond the Boundary Lines or that operates with more than 16 individuals on board must meet the requirements of this subpart in addition to the requirements of subparts A and B of this part.

§ 28.205 Fireman's outfits and self-contained breathing apparatus.

(a) Each vessel that operates with more than 49 individuals on board must be equipped with at least two fireman's outfits stowed in widely separated locations.

(b) Each vessel that uses ammonia as a refrigerant must be equipped with at least two self-contained breathing apparatuses.

(c) A fireman's outfit must consist of one self-contained breathing apparatus with lifeline attached, one flashlight, a rigid helmet, boots, gloves, protective clothing, and one fire axe.

(d) At least one spare air bottle must be provided for each self-contained breathing apparatus.

(e) Each self-contained breathing apparatus must be approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health

(NIOSH), have as a minimum a 30 minute air supply, and a full facepiece.

§ 28.210 First aid equipment and training.

(a) Each vessel must have on board a complete first aid manual and medicine chest of a size suitable for the number of individuals on board in a readily accessible location.

(b) *First aid and cardiopulmonary resuscitation (CPR) course certification.* Certification in first aid and CPR must be as described in this paragraph.

(1) First aid—a certificate indicating completion of a first aid course from:

(i) The American National Red Cross "Standard first Aid and Emergency Care" or "Multi-media Standard First Aid" course; or

(ii) A course approved by the Coast Guard under § 10.205(h)(l)(ii) of this chapter.

(2) CPR—A certificate indicating completion of course from:

(i) The American National Red Cross;

(ii) The American Heart Association; or

(iii) A course approved by the Coast guard under § 10.205(h)(2)(iii) of this chapter.

(c) After September 1, 1993, each vessel that operates with more than 2 individuals on board must have at least 1 individual certified in first aid and at least 1 individual certified in CPR. An individual certified in both first aid and CPR will satisfy both of these requirements.

(d) After September 1, 1993, each vessel that operates with more than 16 individuals on board must have at least 2 individuals certified in first aid and at least 2 individuals certified in CPR. An individual certified in both first aid and CPR may be counted against both requirements.

(e) After September 1, 1993, each vessel that operates with more than 49 individuals on board must have at least 4 individuals certified in first aid and at least 4 individuals certified in CPR. An individual certified in both first aid and CPR may be counted against both requirements.

§ 28.215 Guards for exposed hazards.

(a) Each space on board a vessel must meet the requirements of this section.

(b) Suitable hand covers, guards, or railing must be installed in way of machinery which can cause injury to personnel, such as gearing, chain or belt drives, and rotating shafting. This is not meant to restrict necessary access to fishing equipment such as winches, drums, or gurdies.

(c) Each exhaust pipe from an internal combustion engine which is within reach of personnel must be insulated or otherwise guarded to prevent burns.

§ 28.225 Navigational information.

(a) Each vessel must have at least the following navigational information on board:

(1) Marine charts of the area to be transited, published by the National Ocean Service, Defense Mapping Agency Hydrographic/Topographic Center, U.S. Army Corps of Engineers, or a river authority that—

(i) Are of a large enough scale and have enough detail to make safe navigation of the area possible; and

(ii) Are currently corrected.

(2) For the area to be transited, a currently corrected copy of, or applicable currently corrected extract from, each of the following publications:

(i) U.S. Coast Pilot; and

(ii) Coast Guard Light List.

(3) For the area to be transited, the current edition of, or applicable current extract from, each of the following publications:

(i) Tide tables published by the National Ocean Service; and

(ii) Tidal current tables published by the National Ocean Service, or river current publication issued by the U.S. Army Corps of Engineers or a river authority.

(b) Each vessel of 39.4 feet (12 meters) or more in length that operates shoreward of the COLREG Demarcation Lines, as set forth in 33 CFR part 80, must carry on board and maintain for ready reference a copy of the Inland Navigation Rules, as set forth in 33 CFR chapter I, subchapter E.

§ 28.230 Compasses.

Each vessel must be equipped with an operable magnetic steering compass with a compass deviation table at the operating station.

§ 28.235 Anchors and radar reflectors.

(a) Each vessel must be fitted with an anchor(s) and chain(s), cable, or rope appropriate for the vessel and the waters of the intended voyage.

(b) Except for a vessel rigged with gear that provides a radar signature from a distance of 6 miles, each nonmetallic hull vessel must have a radar reflector.

§ 28.240 General alarm system.

(a) Except as provided in paragraph (f) of this section, after September 1, 1992, each vessel with an accommodation space or a work space which is not adjacent to the operating station, must have an audible general alarm system with a contact-maker at the operating station suitable for notifying individuals on board in the event of an emergency.

(b) The general alarm system must be capable of notifying an individual in any accommodation space or work space where they may normally be employed.

(c) In a work space where background noise makes a general alarm system difficult to hear, a flashing red light must also be installed.

(d) Each general alarm bell and flashing red light must be identified with red lettering at least ½ inch (13 millimeters) high as follows:

Attention

General Alarm—When Alarm Sounds Go to Your Station.

(e) A general alarm system must be tested prior to operation of the vessel and at least once each week thereafter.

(f) A public address system or other means of alerting all individuals on board may be used in lieu of a general alarm system provided it complies with paragraphs (b), (c), and (e) of this section and can be activated from the operating station.

§ 28.245 Communication equipment.

(a) Except as provided in paragraphs (b) through (e) of this section, each vessel must be equipped as follows.

(1) Each vessel must be equipped with a VHF radiotelephone capable of transmitting and receiving on the frequency or frequencies within the 156–162 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(2) Each vessel that operates more than 20 miles from the coastline, in addition to the VHF radiotelephone required by paragraph (a)(1) of this section, must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–4 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(3) Each vessel that operates more than 100 miles from the coastline, in addition to the communication equipment required by paragraph (a)(1) of this section must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–27.5 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(4) Each vessel that operates in waters contiguous to Alaska where no public coast station or U.S. Coast Guard

station is within communications range of a VHF radio transceiver operating on the 156–162 MHz band or the 2–4 MHz band, in addition to the VHF radio communication equipment required by paragraph (a)(1) of this section, must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–27.5 MHz band necessary to communicate with a public coast station or a U.S. Coast Guard station serving the area in which the vessel is operating.

(b) A single radio transceiver capable of meeting the requirements of paragraphs (a) (2) and (3), or paragraphs (a) (2), (3), and (4) of this section, is acceptable.

(c) Satellite communication capability with the system servicing the area in which the vessel is operating is acceptable as an alternative to the requirements of paragraphs (a)(2), (a)(3), or (a)(4) of this section.

(d) A cellular telephone capable of communicating with a public coast station or a U.S. Coast Guard station serving the area in which the vessel is operating is acceptable as an alternative to the requirements of paragraphs (a)(2), (a)(3), or (a)(4) of this section.

(e) A radiotelephone transceiver installed on board a vessel before September 15, 1991, capable of transmitting and receiving on frequencies on the 4–20 MHz band may continue to be used to satisfy the requirements of paragraphs (a)(3) and (a)(4) of this section.

(f) The principle operating position of the communication equipment must be at the operating station.

(g) Communication equipment must be installed to ensure safe operation of the equipment and to facilitate repair. It must be protected against vibration, moisture, temperature, and excessive currents and voltages. It must be located so as to minimize the possibility of water intrusion from windows broken by heavy seas.

(h) Communication equipment must comply with the technical standards and operating requirements issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

Note: Each vessel which uses radio equipment to meet the communication requirements of this section must have a Ship Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

(i) All communication equipment must be provided with an emergency source of power that complies with § 28.375.

§ 28.250 High water alarms.

On a vessel 36 feet (11.8 meters) or more in length, a visual and audible alarm must be provided at the operating station to indicate high water level in each of the following normally unmanned spaces:

(a) A space with a through-hull fitting below the deepest load waterline, such as the lazarette;

(b) A machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space; and

(c) A space with a non-watertight closure, such as a space with a non-watertight hatch on the main deck.

§ 28.255 Bilge pumps, bilge piping, and dewatering systems.

(a) Each vessel must be equipped with a bilge pump and bilge piping capable of draining any watertight compartment, other than tanks and small buoyancy compartments, under all service conditions. Large spaces, such as enginerooms must be fitted with more than one suction line.

(b) In addition to the requirements of paragraph (a) of this section, a space used in the sorting or processing of fish in which water is used must be fitted with dewatering system capable of dewatering the space under normal conditions of list and trim at the same rate as water is introduced. Pumps used as part of the processing of fish do not count for meeting this requirement. The dewatering system must be interlocked with the pump(s) supplying water to the space, so that in the event of failure of the dewatering system, the water supply is inactivated.

(c) Except as provided by paragraph (f) of this section, each vessel 79 feet (24 meters) or more in length must be equipped with a fixed, self-priming, powered, bilge pump connected to a bilge manifold.

(d) If a bilge pump required by paragraph (a) of this section is portable, it must be provided with a suitable suction hose of adequate length to reach the bilges of each watertight compartment it must serve and with a discharge hose of adequate length to ensure overboard discharge. A portable pump must be capable of dewatering each space it serves at a rate of at least 2 inches (51 millimeters) of water depth per minute.

(e) Except for a fire pump required by § 28.315, a bilge pump may be used for other purposes.

(f) Except where an individual pump is provided for a separate space or for a portable pump, each individual bilge suction line must be led to a manifold. Each bilge suction line must be provided with a stop valve at the manifold and a check valve at some accessible point in the bilge line to prevent unintended flooding of a space.

(g) Each bilge suction line and dewatering system suction must be fitted with a suitable strainer to prevent clogging of the suction line. Strainers must have an open area of not less than three times the open area of the suction line.

(h) Each vessel must comply with the oil pollution prevention requirements of 33 CFR parts 151 and 155.

§ 28.260 Electronic position fixing devices.

Each vessel 79 feet (24 meters) or more in length must be equipped with an electronic position fixing device capable of providing accurate fixes for the area in which the vessel operates.

§ 28.265 Emergency instruction.

(a) Except as provided in paragraphs (b) and (c) of this section, each vessel must have emergency instructions posted in conspicuous locations accessible to the crew.

(b) The instructions identified in paragraphs (d)(6), (d)(7), (d)(8), and (d)(9) of this section, may be kept readily available as an alternative to posting.

(c) On a vessel which operates with less than 4 individuals on board, the emergency instructions may be kept readily available as an alternative to posting.

(d) The emergency instructions required by this section must identify at least the following information, as appropriate for the vessel:

(1) The survival craft embarkation stations aboard the vessel and the survival craft to which each individual is assigned;

(2) The fire and emergency signal and the abandon ship signal;

(3) If immersion suits are provided, the location of the suits and illustrated instructions on the method for donning the suits;

(4) Procedures for making a distress call, such as:

(i) Make sure your communication equipment is on.

(ii) Select 156.8 MHz (VHF channel 16), 2182 kHz, or other distress frequency used in your area of operation. Note: VHF channel 16 and 2182 kHz on SSB are for emergency and calling purposes only.

(iii) Press microphone button and speaking slowly—clearly—calmly say: "Mayday—Mayday—Mayday"

(iv) Say: "This is the M/V (Insert name of your vessel), (Insert name of your vessel), (Insert name of your vessel), Over."

(v) Release the microphone button briefly and listen for acknowledgment. If no one answers, repeat steps in paragraphs (d)(4) (iii) and (iv) of this section.

(vi) If there is still no answer, or if the Coast Guard or another vessel responds, say: "Mayday—This is the M/V (Insert Name of Your Vessel)."

(vii) Describe your position using latitude and longitude coordinates, LORAN coordinate, or range and bearing from a known point.

(viii) State the nature of the distress.

(ix) Give number of individuals aboard and the nature of any injuries.

(x) Estimate the present seaworthiness of your vessel.

(xi) Describe your vessel: (Insert length, color, hull type, trim, masts, power, and any additional distinguishing features).

(xii) Say: "I will be listening on Channel 16/2182 (or other channel monitored)."

(xiii) End message by saying: "This is (insert vessel's name and call sigh)."

(xiv) If your situation permits, stand by the radio to await further communication with the Coast Guard or another vessel. If no answer, repeat, then try another channel.

(5) Essential action that must be taken in an emergency by each individual, such as:

(i) Making a distress call.

(ii) Closing of hatches, airports, watertight doors, vents, scuppers, and valves for intake and discharge lines which penetrate the hull, stopping of fans and ventilation systems, and operation of all safety equipment.

(ii) Preparing and launching of survival craft and rescue boats.

(iv) Fighting a fire.

(v) Mustering of personnel including—

(A) Seeing that they are properly dressed and have put on their lifejackets or immersion suits; and

(B) Assembling personnel and directing them to their appointed stations.

(vi) Manning of fire parties assigned to deal with fires.

(vii) Special duties required for the operation of fire fighting equipment.

(6) The procedures for rough weather at sea, crossing hazardous bars, flooding, and anchoring of the vessel, such as:

(i) Close all watertight and weathertight doors, hatches and airports to prevent taking water aboard or further flooding in the vessel.

(ii) Keep bilges dry to prevent loss of stability due to water in bilges. Use power driven bilge pump, hand pump, and buckets to dewater.

(iii) Align fire pumps to use as bilge pumps, if possible.

(iv) Check all intake and discharge lines which penetrate the hull for leakage.

(v) Personnel should remain stationary and evenly distributed.

(vi) Personnel should don lifejackets and immersion suits if the going becomes very rough, the vessel is about to cross a hazardous bar, or when otherwise instructed by the master or individual in charge of the vessel.

(7) The procedures for anchoring the vessel.

(8) The procedures to be used in the event an individual falls overboard, such as:

(i) Throw a ring life buoy as close to the individual as possible;

(ii) Post a lookout to keep the individual in the water in sight;

(iii) Launch the rescue boat and maneuver it to pick up the individual in the water;

(iv) Have a crewmember put on a lifejacket or immersion suit, attach a safety line to the crewmember, and have the crewmember standby to jump into the water to assist in recovering the individual in the water if necessary;

(v) If the individual overboard is not immediately located, notify the Coast Guard and other vessels in the vicinity; and

(vi) Continue searching until released by the Coast Guard.

(9) Procedures for fighting a fire, such as:

(i) Shut off air supply to the fire—close hatches, ports, doors, ventilators, and similar openings.

(ii) Deenergize the electrical systems supplying the affected space, if possible.

(iii) Immediately use a portable fire extinguisher or use water for fires in ordinary combustible materials. Do not use water on electrical fires.

(iv) If the fire is in a machinery space, shut off the fuel supply and ventilation system and activate the fixed extinguishing system, if installed.

(v) Maneuver the vessel to minimize the effect of wind on the fire.

(vi) If unable to control the fire, immediately notify the Coast Guard and other vessels in the vicinity.

(vii) Move personnel away from the fire, have them put on lifejackets, and if necessary, prepare to abandon the vessel.

§ 28.270 Instruction, drills, and safety orientation.

(a) *Drills and instruction.* The master or individual in charge of each vessel must ensure that drills are conducted and instruction is given to each individual on board at least once each month. Instruction may be provided in conjunction with drills or at other times and places provided it ensures that each individual is familiar with their duties and their responses to at least the following contingencies:

(1) Abandoning the vessel;

(2) Fighting a fire in different locations on board the vessel;

(3) Recovering an individual from the water;

(4) Minimizing the affects of unintentional flooding;

(5) Launching survival craft and recovering lifeboats and rescue boats;

(6) Donning immersion suits and other wearable personal flotation devices;

(7) Donning a fireman's outfit and a self-contained breathing apparatus, if the vessel is so equipped;

(8) Making a voice radio distress call and using visual distress signals;

(9) Activating the general alarm; and

(10) Reporting inoperative alarm systems and fire detection systems.

(b) *Participation in drills.* Drills must be conducted on board the vessel as if there were an actual emergency and must include participation by all individuals on board, breaking out and using emergency equipment, testing of all alarm and detection systems, donning protective clothing, and donning immersion suits, if the vessel is so equipped.

(c) *Training.* After September 1, 1994, no individual may conduct the drills or provide the instructions required by this section unless that individual has been trained in the proper procedures for conducting the activity. An individual licensed for operation of inspected vessels of 100 gross tons or more need not have additional training to comply with this requirement.

(d) The viewing of videotapes concerning at least the contingencies listed in paragraph (a) of this section, whether on board the vessel or not, followed by a discussion led by an individual familiar with these contingencies will satisfy the requirement for instruction but not the requirement for drills in paragraph (b) of this section or for the safety orientation in paragraph (e) of this section.

(e) *Safety orientation.* The master or individual in charge of a vessel must ensure that a safety orientation is given to each individual on board that has not received the instruction and has not participated in the drills required by paragraph (a) of this section before the vessel may be operated.

(f) The safety orientation must explain the emergency instructions required by § 28.265 and cover the specific

evolutions listed in paragraph (a) of this section.

Note: The individual conducting the drills and instruction need not be the master, individual in charge of the vessel, or a member of the crew.

Subpart D—Requirements for Vessels Which Have Their Keel Laid or Are at a Similar Stage of Construction on or After or Which Undergo a Major Conversion Completed on or After September 15, 1991, and That Operate With More Than 16 Individuals on Board

§ 28.300 Applicability and general requirements.

Each commercial fishing industry vessel which has its keel laid or is at a similar stage of construction on or after or which undergoes a major conversion completed on or after September 15, 1991, and that operates with more than 16 individuals on board must comply with the requirements of this subpart in addition to the requirements of subparts A, B, and C of this part.

§ 28.305 Lifesaving and signaling equipment.

Each vessel to which this subpart applies must meet the requirements for life preservers, immersion suits, ring life buoys, distress signals, and survival craft in §§ 28.110, 28.115, 28.145 and table 28.120 (a), (b), or (c), as appropriate for the vessel type, on the date that its construction or major conversion is completed.

§ 28.310 Launching of survival craft.

A gate or other opening must be provided in the deck rails, lifelines, or bulwarks adjacent to the stowage location of each survival craft which weighs more than 110 pounds (489 Newtons), to allow the survival craft to be manually launched.

§ 28.315 Fire pumps, fire mains, fire hydrants, and fire hoses.

(a) Each vessel 36 feet (11.8 meters) or more in length must be equipped with a self-priming, power driven fire pump connected to a fixed piping system.

(1) A fire pump on a vessel 79 feet (24 meters) or more in length must be capable of delivering water simultaneously from the two highest hydrants, or from both branches of the fitting if the highest hydrant has a siamese fitting, at a pitot tube pressure of at least 50 psi (0.345 Newtons per square millimeter) and a flow rate of at least 60 gpm (303 liters per minute).

(2) Each vessel with a power driven fire pump must be equipped to permit energizing the fire main from the operating station and from the pump.

(b) *Fire main, hydrants, hoses and nozzles.*

(1) A vessel required to have a fixed fire main system must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of fire hose.

(2) A fire hose must be connected to each fire hydrant at all times the vessel is operating.

(3) A fire hose on a vessel less than 79 feet (24 meters) in length must be at least ⅝ inch (16 millimeters) nominal diameter, be of good commercial grade and be fitted with a nozzle of corrosion resistant material capable of providing a solid stream and a spray pattern.

(4) A fire hose on a vessel 79 feet (24 meters) or more in length must be lined commercial fire hose and be fitted with a nozzle made of corrosion resistant material capable of providing a solid stream and a spray pattern.

§ 28.320 Fixed gas fire extinguishing systems.

(a) *Requirements for vessels 79 feet (24 meters) or more in length.* A vessel 79 feet (24 meters) or more in length must be fitted with a fixed gas fire extinguishing system in the following enclosed spaces:

(1) A space containing an internal combustion engine of more than 50 horsepower;

(2) A space containing an oil fired boiler;

(3) An incinerator and;

(4) A space containing a gasoline storage tank.

(b) *System types and alternatives.*

(1) A pre-engineered fixed gas fire extinguishing system may only be installed in a normally unoccupied machinery space, a paint locker, or a space containing flammable liquid stores, which has a gross volume of not more than 1200 cubic feet (42.4 cubic meters).

(2) A fixed gas fire extinguishing system, which is capable of automatic discharge upon heat detection, may only be installed in a normally unoccupied space with a gross volume of not more than 6000 cubic feet (21.2 cubic meters).

(3) A space with a gross volume exceeding 6000 cubic feet (21.2 cubic meters) must be fitted with a manually actuated and alarmed, fixed gas fire extinguishing system.

(c) *General requirements.*

(1) A fixed gas fire extinguishing system aboard a vessel must be approved by the Commandant and be custom engineered, unless the system meets the requirements for a pre-engineered fixed gas fire extinguishing system in paragraph (d) of this section.

(2) System components must be listed and labeled by an independent, nationally recognized testing laboratory for the system being installed.

(3) System design and installation must be in accordance with the Manufacturer's Marine Design, Installation, Operation, and Maintenance Manual approved for the system by the Commandant.

(4) A fixed gas fire extinguishing system may protect more than one space. The quantity of extinguishing agent must be at least sufficient for the largest space protected by the system.

(d) *Pre-engineered fixed gas fire extinguishing systems.*

(1) A pre-engineered fixed gas fire extinguishing system must:

(i) Be approved by the Commandant;

(ii) Be capable of manual actuation from outside the space in addition to any automatic actuation devices; and

(iii) Automatically shut down all power ventilation systems serving the protected space and all engines that draw intake air from within the protected space.

(2) A vessel on which a pre-engineered fixed gas fire extinguishing system is installed must have the following equipment at the operating station:

(i) A visual alarm to indicate the discharge of the extinguishing agent;

(ii) An audible alarm to sound upon discharge of the extinguishing agent; and

(iii) A means to reset devices used to automatically shut down ventilation systems and engines as required by paragraph (d)(1)(iii) of this section.

§ 28.325 Fire detection systems.

(a) Each accommodation space must be equipped with an independent modular smoke detector or a smoke actuated fire detecting unit installed in accordance with 46 CFR part 76, subpart 76.33.

(b) An independent modular smoke detector must meet UL 217 and be listed as a "Single Station Smoke Detector—Also suitable for use in Recreational Vehicles."

§ 28.330 Galley hood and other fire protection equipment.

(a) Each vessel must be fitted with a grease extraction hood complying with UL 710 above each grill, broiler, and deep fat fryer.

(b) Each grease extraction hood must be equipped with a pre-engineered dry or wet chemical fire extinguishing system meeting the applicable sections of NFPA 17 or 17A and must be listed by an independent laboratory.

(c) A vessel 79 feet (24 meters) or more in length must have at least one fire axe located in or adjacent to the operating station.

§ 28.335 Fuel systems.

(a) *Applicability.* Except for the components of an outboard engine or portable bilge pump, each vessel must meet the requirements of this section.

(b) *Portable fuel systems.* Portable fuel systems including portable tanks and related fuel lines and accessories are prohibited except where used for outboard engines or portable bilge pumps. The design, construction, and stowage of portable tanks and related fuel lines and accessories must meet the requirements of ABYC H–25.

(c) *Fuel restrictions.* Except for outboard engines, the use of fuel other than bunker C or diesel is prohibited. An installation using bunker C must comply with the requirements of subchapter F of this chapter.

(d) *Vent pipes for integral fuel tanks.* Each integral fuel tank must meet the requirements of this paragraph.

(1) Each fuel tank must be fitted with a vent pipe connected to the highest point of the tank terminating in a 180 degree (3.14 radians) bend on a weather deck and fitted with a flame screen.

(2) Except where provision is made to fill a tank under pressure, the net cross-sectional area of the vent pipe for a fuel tank must not be less than 0.484 square inches (312.3 square millimeters).

(3) Where provision is made to fill a tank under pressure, the net cross-sectional area of the vent pipe must not be less than that of the fill pipe.

(e) *Fuel piping.* Except as permitted in paragraph (e)(1) and (e)(2) of this section, each fuel line must be seamless and must be of steel, annealed copper, nickel-copper, or copper-nickel. Each fuel line must have a wall thickness of not less than that of 0.035 inch (0.9 millimeters) except that:

(1) Aluminum piping is acceptable on an aluminum hull vessel provided it is installed outside the machinery space and is at least Schedule 80 in thickness; and

(2) Nonmetallic flexible hose is acceptable but must—

(i) Not be used in lengths of more than 30 inches (0.82 meters);

(ii) Be visible, easily accessible, and must not penetrate a watertight bulkhead;

(iii) Be fabricated with an inner tube and a cover of synthetic rubber or other suitable material reinforced with wire braid.

(iv) Be fitted with suitable, corrosion resistant, compression fittings; and

(v) Be installed with two clamps at each end of the hose, if designed for use with clamps. Clamps must not rely on spring tension and must be installed beyond the bead or flare or over the serrations of the mating spud, pipe, or hose fitting.

(f) A fuel line subject to internal head pressure from fuel in the tank must be fitted with a positive shutoff valve located at the tank which is operable from a safe location outside the space in which the valve is located.

(g) A vessel less than 79 feet (24 meters) in length may comply with one of the following standards in lieu of the requirements of paragraphs (e) and (f) of this section.

(1) ABYC H–33.

(2) Chapter 5 of NFPA 302.

(3) 33 CFR Chapter I, subchapter S (Boating Safety).

§ 28.340 Ventilation of enclosed engine and fuel tank spaces.

(a) *Applicability.* Each vessel with a gasoline outboard engine or gasoline storage tank must comply with the requirements of this section.

(b) *Ventilation of spaces containing gasoline.* Each space that contains a gasoline engine, a gasoline storage tank, or gasoline piping connected to an integral gasoline tank must be open to the atmosphere and so arranged as to prevent the entrapment of vapors or be ventilated by a mechanical exhaust system with a nonsparking fan. The fan motor must comply with 46 CFR 111.105–23.

(c) *Alternative standards.* A vessel less than 65 feet in length with ventilation installations in accordance with NFPA 302, chapter 2, section 2–2, or ABYC H–2 and 33 CFR part 183, subpart K, will be considered as meeting the requirements of this section.

§ 28.345 Electrical standards for vessels less than 79 feet (24 meters) in length.

(a) A vessel less than 79 feet (24 meters) in length with an alternating current electrical distribution system may comply with the requirements of ABYC E–8 and either paragraph (c) or (d) of this section, as applicable, in lieu of meeting the requirements of §§ 28.350 through 28.370.

(b) A vessel less than 79 feet (24 meters) in length with a direct current system may comply with the requirements of ABYC E–1, ABYC E–9, and either paragraph (c) or (d) of this section, as applicable, in lieu of meeting the requirements of §§ 28.350 through 28.370.

(c) In addition to paragraph (a) or (b) of this section, the vessel may comply with the requirements of NFPA 302, chapters 7 and 8.

(d) In addition to paragraph (a) or (b) of this section, the vessel may comply with the requirements of 33 CFR part 183, subpart I and § 28.370.

§ 28.350 General requirements for electrical systems.

(a) Electrical equipment exposed to the weather or in a location exposed to seas must be waterproof, watertight, or enclosed in a watertight housing.

(b) Aluminum must not be used for current carrying parts of electrical equipment or wiring.

(c) As far as practicable, electrical equipment must not be installed in lockers used to store paint, oil, turpentine, or other flammable or combustible liquid. If electrical equipment, such as lighting, is necessary in these spaces, it must be explosion-proof or intrinsically safe.

(d) Explosion-proof and intrinsically safe equipment must meet the requirements of 46 CFR part 111, subpart 111.105.

(e) Metallic enclosures and frames of electrical equipment must be grounded.

(f) Each vessel with a nonmetallic hull must have a continuous, non-current carrying grounding conductor which connects together the enclosures and frames of electrical equipment and which connects metallic items such as engines, fuel tanks, and equipment enclosures to a common ground point.

(g) The equipment grounding conductor must be sized in accordance with section 250–95 of NFPA Standard 70.

§ 28.355 Main source of electrical power.

(a) *Applicability.* Each vessel that relies on electricity to power any of the following essential loads must have at least two electrical generators to supply these loads:

(1) The propulsion system and its necessary auxiliaries and controls;

(2) Interior lighting;

(3) Steering systems;

(4) Communication systems;

(5) Navigation equipment and navigation lights;

(6) Fire protection or detection equipment;

(7) Bilge pumps; or

(8) General alarm system.

(b) Each generator must be attached to an independent prime mover.

§ 28.360 Electrical distribution systems.

(a) Each electrical distribution system which has a neutral bus or conductor must have the neutral bus or conductor grounded.

(b) A grounded electrical distribution system must have only one connection to ground. This ground connection must be at the switchboard or, on a nonmetallic vessel, at the common ground point.

§ 28.365 Overcurrent protection and switched circuits.

(a) Each power source must be protected against overcurrent. Overcurrent devices for generators must be set at a value not exceeding 115 percent of the generator full load rating.

(b) Except for a steering circuit, each circuit must be protected against both overload and short circuit. Each overcurrent device in a steering system power and control circuit must provide short circuit protection only.

(c) Each ungrounded current carrying conductor must be protected in accordance with its current carrying capacity by a circuit breaker or fuse at the connection to the switchboard or distribution panel bus.

(d) Each circuit breaker and each switch must simultaneously open all ungrounded conductors.

(e) The grounded conductor of a circuit must not be disconnected by a switch or an overcurrent device unless all ungrounded conductors of the circuit are simultaneously disconnected.

(f) Navigation light circuits must be separate, switched circuits having fused disconnect switches or circuit breakers so that only the appropriate navigation lights can be switched on.

(g) A separate circuit with overcurrent protection at the main distribution panel or switchboard must be provided for each radio installation.

§ 28.370 Wiring methods and materials.

(a) All cable and wire must have insulated, stranded copper conductors of the appropriate size and voltage rating for the circuit.

(b) Each conductor must be No. 22 AWG or larger. Conductors in power and lighting circuits must be No. 14 AWG or larger. Conductors must be sized so that the voltage drop at the load terminals is not more than 10 percent.

(c) Cable and wiring not serving equipment in a high risk fire area such as a galley, laundry, or machinery space must be routed as far as practicable from these spaces. As far as practicable, cables serving duplicated essential equipment must be separated so that a casualty that affects one cable does not affect the other.

(d) Cable and wire for power and lighting circuits must:

(1) For circuits of less than 50 volts, meet 33 CFR 183.425 and 183.430; and

(2) For circuits of 50 volts or greater:

(i) Meet section 310–13 and 310–15 of NFPA 70, except that asbestos insulated cable and dry location cable must not be used;

(ii) Be listed by Underwriters Laboratories Inc. as UL Boat or UL Marine Shipboard cable; or

(iii) Meet 46 CFR part 111, subpart 111.60.

(e) All metallic cable armor must be electrically continuous and grounded to the metal hull or the common ground point at each end of the cable run, except that final sub-circuits (those supplying loads) may be grounded at the supply end only.

(f) A wiring termination and connection must be made in a fire retardant enclosure such as a junction box, fixture enclosure, or panel enclosure. A fire retardant plastic enclosure is acceptable.

§ 28.375 Emergency source of electrical power.

(a) Each vessel must have an emergency source of electrical power which is independent of the main sources of electrical power and which is located outside the main machinery space.

(b) The emergency source of electrical power must be capable of supplying all connected loads continuously for a least 3 hours.

(c) Except as provided in paragraphs (d) and (e) of this section, the following electrical loads must be connected to the emergency source of power:

(1) Navigation lights;

(2) Steering systems;

(3) Bilge pumps;

(4) Fire protection and detection systems, including fire pumps;

(5) Communication equipment;

(6) General alarm system; and;

(7) Emergency lighting.

(d) A vessel less than 36 feet (11.0 meters) in length need only supply communication equipment by an emergency source of electrical power if flashlights are provided.

(e) A vessel less than 79 feet (24 meters) in length which is not dependent upon electrical power for propulsion, including propulsion control systems or steering, need only supply emergency lighting, navigation equipment, general alarm system, and communication systems by the emergency source of power.

(f) Where the emergency source of power is a generator, the generator prime mover must have a fuel supply which is independent of other prime movers.

§ 28.380 General structural fire protection.

(a) *Fire hazards to be minimized.* Each vessel must be constructed so as to minimize fire hazards insofar as is reasonable and practicable.

(b) *Combustibles insulated from heated surfaces.* An internal combustion engine exhaust, galley uptake, or similar source of ignition must be kept clear of an suitably insulated from combustible material. A dry exhaust system for an internal combustion engine on a wooden or fiber reinforced plastic vessel must be installed in accordance with ABYC P–1.

(c) *Separation of machinery and fuel tank spaces from accommodation spaces.*

(1) Each accommodation space must be separated from machinery and fuel tank spaces by a fire resistant boundary which will prevent the passage of vapors.

(2) Each pipe and cable penetration between an accommodation space and a machinery or a fuel tank storage space must be sealed.

(d) *Paint and flammable liquid lockers.* Each vessel carrying paint and flammable liquids must be equipped with a steel or a steel lined storage locker.

(e) *Insulation.* Except as provided in paragraphs (e)(1) and (e)(2) of this section, insulation must be noncombustible.

(1) In machinery spaces, combustible insulation may be used for pipe and machinery lagging.

(2) In cargo spaces and refrigerated compartments of service spaces, combustible insulation may be used.

(f) *Vapor barrier.* Where insulation of any type is used in spaces where flammable and combustible liquids or vapors are present, e.g., machinery spaces and paint lockers, a vapor barrier which covers the insulation must be provided.

(g) *Paint.* Nitrocellulose or other highly flammable or noxious fume producing paints or lacquers must not be used on the vessel.

(h) *Mattresses.* Polyurethane foam mattresses are prohibited.

Note: The U.S. Department of Commerce Standard for Mattress Flammability (FF4–72.16) in 16 CFR part 1632, subpart A, applies to each mattress.

(i) *Fiber reinforced plastic.* When the hull, a deck, deckhouse, or superstructure of a vessel is partially or completely constructed of fiber reinforced plastic, the resin used must be fire retardant.

(j) *Cooking areas.* Vertical or horizontal surfaces within 3 feet (0.91 meters) of cooking appliances must be

composed of noncombustible material or covered by noncombustible material. Curtains, draperies, or free hanging fabrics are not permitted within 3 feet (1 meter) of cooking appliances.

§ 28.385 Structural fire protection for vessels that operate with more than 49 individuals on board.

(a) *Applicability.* Each vessel that operates with more than 49 individuals on board must comply with the requirements of this section in addition to the requirements of § 28.380.

(b) *Construction.* The hull, structural bulkheads, columns and stanchions must be composed of steel. Superstructure and deckhouses must be constructed of noncombustible material.

(c) *Protection of accommodation spaces.* A bulkhead or deck separating an accommodation space from a control station, machinery space, cargo space, or service space must be constructed of noncombustible material.

§ 28.390 Means of escape.

(a) Each space which is used by an individual on a regular basis or which is generally accessible to an individual must have at least two widely separated means of escape. At least one of the means of escape must be independent of watertight doors. Subject to the restrictions of this section, means of escape include normal exits and emergency exits, passageways, stairways, ladders, deck scuttles, and windows.

(b) At least one of the means of escape from each space must provide a satisfactory route to weather.

(c) Each door, hatch or scuttle used as a means of escape must be capable of being opened by one individual, from either side, in both light dark conditions, must open towards the expected direction of escape from the space served, and if a watertight door be of the quick acting type.

(d) Each deck scuttle which serves as a means of escape, must be fitted with a quick-acting release and a device to hold the scuttle in an open position.

(e) Each foothold, handhold, ladder, or similar structure, provided to aid escape, must be suitable for use in emergency conditions and must be of rigid construction.

(f) A window or windshield of sufficient size and proper accessibility may be used as one of the required means of escape from an enclosed space.

§ 28.395 Embarkation stations.

Each vessel must have at least one designated survival craft embarkation station and any additional embarkation stations necessary so that an embarkation station is readily accessible from each accommodation space and work space. Each embarkation station must be arranged to allow the safe boarding of survival craft.

§ 28.400 Radar and depth sounding devices.

(a) Each vessel must be fitted with a general marine radar system for surface navigation with a radar screen mounted at the operating station.

(b) Each vessel must be fitted with a suitable echo depth sounding device.

§28.405 Hydraulic equipment.

(a) Each hydraulic system must be so designed and installed that proper operation of the system is not affected by back pressure in the system.

(b) Piping and piping components must be designed with a burst pressure of not less than four times the system maximum operating pressure.

(c) Each hydraulic system must be equipped with at least one pressure relieving device set to relieve at the system's maximum operating pressure.

(d) All material in a hydraulic system must be suitable for use with the hydraulic fluid used and must be of such chemical and physical properties as to remain ductile at the lowest operating temperature likely to be encountered by the vessel.

(e) Except for hydraulic steering equipment, controls for hydraulic equipment must be located where the operator has an unobstructed view of the hydraulic equipment and the adjacent working area.

(f) Controls for hydraulic equipment must be so arranged that the operator is able to quickly disengage the equipment in an emergency.

(g) Hydraulically operated machinery must be equipped with a holding device to prevent uncontrolled movement due to loss of hydraulic system pressure.

(h) A nonmetallic flexible hose must only be used between two points of relative motion, including a pump and piping system, and must meet SAE J 1942.

(i) Each nonmetallic flexible hose and hose assembly must be installed in accordance with the manufacturer's rating and guidelines and must be limited to a length of not more that 30 inches (0.76 meters) in an application not subject to torsional loading.

§ 28.410 Deck rails lifelines, storm rails and hand grabs.

(a) Except as otherwise provided in paragraph (d) of this section, deck rails, lifelines, grab rails, or equivalent protection must be installed near the periphery of all weather decks accessible to individuals. Where space limitations make deck rails impractical, hand grabs may be substituted.

(b) The height of deck rail, lifelines, or bulwarks must be at least 39½ inches (1 meter) from the deck, except, where this height would interfere with the normal operation of the vessel, a lesser height may be substituted.

(c) All deck rails or lifelines must be permanently supported by stanchions at intervals of not more than 7 feet (2.3 meters). Stanchions must be through bolted or welded to the deck.

(d) Portable stanchions and lifelines may be installed in locations where permanently installed deck rails would impede normal fishing operations or emergency recovery operations.

(e) Deck rails or lifelines must consist of evenly spaced courses. The spacing between courses must not be greater than 15 inches (0.38 meters). The opening below the lowest course must not be more than 9 inches (0.23 meters). Lower courses are not required where all or part of the space below the upper rail is fitted with a bulwark, chain link fencing, wire mesh, or an equivalent.

(f) A suitable storm rail or hand grab must be installed where necessary in a passageway, at a deckhouse side, at a ladder, and a hatch where an individual might have normal access.

(g) A stern trawler must have doors, gates, or other protective arrangements at the top of the stern ramp at least as high as adjacent bulwarks or 39½ inches (1 meter), whichever is less.

Subpart E—Stability

§ 28.500 Applicability.

This subpart applies to each commercial fishing industry vessel which is 79 feet (24 meters) or more in length that is not required to be issued a load line under subchapter E of this chapter and that—

(a) Has its keel laid or is at a similar stage of construction or undergoes a major conversion on or after September 15, 1991;

(b) Undergoes alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner different than has previously been accomplished on the vessel; or

(c) Has been substantially altered on or after September 15, 1991.

§ 28.501 Substantial alterations.

(a) Except as provided in paragraph (b) of this section, a vessel that is substantially altered, including the cumulative effects of all alterations,

need not comply with the remainder of this subpart, provided that it has stability instructions developed by a qualified individual which comply with § 28.530 (c) through (e).

(b) A vessel that is substantially altered in a manner which adversely affects its stability, including the cumulative effects of all alterations, need not comply with the remainder of this subpart, provided the stability instructions required by paragraph (a) of this section are based on loading conditions or operating restrictions, or both, which compensate for the adverse affects of the alterations.

(c) The following changes to a vessel's lightweight characteristics are considered to adversely affect vessel stability:

(1) An increase in the vertical center of gravity at lightweight by more than 2 inches (51 millimeters) compared to the original lightweight value.

(2) An increase or decrease of lightweight displacement by more than 3 percent of the original lightweight displacement.

(3) A shift of the longitudinal center of gravity of more than 1 percent of the vessel's length.

(d) In determining whether or not a vessel's stability has been adversely affected, a qualified individual must, at a minimum, consider the net effects on stability of any:

(1) Reduction of the downflooding angle;

(2) Increase in the maximum heeling moment caused by fishing gear or weight lifted over the side due to changes in lifting arrangement or capacity;

(3) Reduction in freeing port area;

(4) Increase in free surface effects, including increased free surface effects due to water on deck associated with any increase in length or height of bulwarks;

(5) Increase in projected wind area;

(6) Decrease in the angle of maximum righting arm;

(7) Decrease in the area under the righting arm curve; and

(8) Increase in the surface area on which ice can reasonably be expected to accumulate.

§ 28.505 Vessel Owner's responsibility.

(a) Where a test or calculations are necessary to evaluate stability, it is the owner's responsibility to select a qualified individual to perform the test or calculations.

(b) Test results and calculations developed in evaluating stability must be maintained by the owner.

§ 28.510 Definition of stability terms.

Downflooding means the entry of seawater through any opening into the hull or superstructure of an undamaged vessel due to heel, trim, or submergence of the vessel.

Downflooding angle means the static angle from the intersection of the vessel's centerline and the waterline in calm water to the first opening that cannot be closed weathertight and through which downflooding can occur.

Flush deck means a continuous weather deck located at the uppermost sheer line of the hull.

Forward perpendicular means a vertical line corresponding to the intersection of the forward side of the vessel's stem and the vessel's waterline at the vessel's deepest operating draft.

Open boat means a vessel not protected from entry of water by means of a complete deck, or by a combination of partial weather deck and superstructure which is seaworthy for the waters upon which the vessel operates.

Protected waters means sheltered waters presenting no special hazards such as most rivers, harbors, lakes, and similar waters as determined by the OCMI.

Qualified individual means an individual or an organization with formal training in and experience in matters dealing with naval architecture calculations.

Substantially altered means the vessel is physically altered in a manner that affects the vessel's stability and includes:

(1) Alterations that result in a change of the vessel's lightweight vertical center of gravity of more than 2 inches (51 millimeters), a change in the vessel's lightweight displacement of more than 3 percent, or an increase of more than 5 percent in the vessel's projected lateral area, as determined by tests or calculations;

(2) Alterations which change the vessel's underwater shape;

(3) Alterations which change a vessel's angle of downflooding; and

(4) Alterations which change a vessel's buoyant volume.

Well deck means a weather deck fitted with solid bulwarks that impede the drainage of water over the sides or an exposed recess in the weather deck extending one-half or more of the length of the vessel.

§ 28.515 Submergence test as an alternative to stability calculations.

(a) A vessel may comply with this section in lieu of the remainder of the requirements in this subpart. A certification plate installed under 33 CFR part 183, subpart B, is acceptable evidence of compliance with this section.

(b) A vessel which is fitted with inboard engines and loaded as described in paragraph (e) of this section must float in calm water, after being submerged for 18 hours, so that—

(1) For a open vessel, any portion of the vessel's gunwale is above the water's surface; or

(2) For a decked vessel, any portion of the main deck is above the water's surface.

(c) A vessel which is fitted with an outboard engine must be loaded as described in paragraph (e) of this section and must float in calm water after being submerged for 18 hours so that—

(1) The vessel has an equilibrium heel angle of less than 10°;

(2) Any portion of the vessel's hull is above the water's surface; and

(3) Any portion of the lowest 3 feet (0.91 meters) of the vessel's hull is not more than 6 inches (152 millimeters) below the water's surface as measured at the lowest point on the following—

(i) The gunwale, for an open boat; or

(ii) The main deck, for a decked vessel.

(d) A vessel which is fitted with an outboard engine must be loaded as described in paragraph (f) of this section and must survive the submergence described in paragraph (c) of this section, except that the equilibrium heel angle must not exceed 30° and the vessel must float with the lower end of the vessel not more than 12 inches (0.31 meters) below the water's surface in calm water.

(e) For the tests described in paragraph (b) and (c) of this section, a vessel must be complete in all respects, except that machinery which would be damaged by water may be replaced with equivalent fixed weight in the same location as the machinery it replaces. The vessel must be loaded with weight to represent the most adverse loading condition. The most adverse loading condition normally includes the maximum weight of fish in its highest possible location. Weights must be substituted for operating personnel at 165 pounds (734 Newtons) per individual and may be substituted for fishing gear. The substitute weights may be located transversely so that the vessel floats level prior to being submerged. The two largest air chambers, or compartments of a decked vessel not used as fuel tanks, that contribute buoyancy to the vessel must be flooded.

(f) For the test described in paragraph (d) of this section, a vessel must be

complete and loaded as described in paragraph (e) of this section, except that the center of gravity of the equivalent maximum fish load must be located to one side of the vessel's centerline by a distance equal to one-fifth of the maximum transverse dimension of the fish storage space.

§ 28.520 [Reserved]

§ 28.525 [Reserved]

§ 28.530 Stability instructions.

(a) *Intent.* The intent of this section is to ensure that vessel masters and individuals in charge of vessels are provided with enough stability information to allow them to maintain their vessel in a satisfactory stability condition. The rules provide maximum flexibility for owners and qualified individuals to determine how this information is conveyed, taking into consideration decisions by operating personnel must be made quickly and that few operating personnel in the commercial fishing industry have had specialized training in stability. Therefore, stability instructions should take into account the conditions a vessel may reasonably be expected to encounter and provide simple guidance for the operating personnel to deal with these situations.

(b) Each vessel must be provided with stability instructions which provide the master or individual in charge of the vessel with loading constraints and operating restrictions which maintain the vessel in a condition which meets the applicable stability requirements of this subpart.

(c) Stability instructions must be developed by a qualified individual.

(d) Stability instructions must be in a format easily understood by the master or individual in charge of the vessel. Units of measure, language, and rigor of calculations in the stability instructions must be consistent with the ability of the master or the individual in charge of the vessel. The format of the stability instructions may include, at the owner's discretion, any of the following:

(1) Simple loading instructions;

(2) A simple loading diagram with instructions;

(3) A stability booklet with sample calculations; or

(4) Any other appropriate format for providing stability instructions.

(e) Stability instructions must be developed based on the vessel's individual characteristics and may include the following, as appropriate for the format chosen for presentation:

(1) A general description of the vessel, including lightweight data;

(2) Instructions on the use of the information;

(3) General arrangement plans showing watertight compartments, closures, vents, downflooding angles, and allowable weights;

(4) Loading restrictions, such as diagrams, tables, descriptions or maximum KG curves;

(5) Sample loading conditions;

(6) General precautions for preventing unintentional flooding;

(7) Capacity plan or tank sounding tables showing tank and hold capacities, centers of gravity, and free surface effects;

(8) A rapid and simple means for evaluating any specific loading condition;

(9) The amount and location of fixed ballast;

(10) Any other necessary guidance for maintaining adequate stability under normal and emergency conditions;

(11) A general description of the stability criteria that are used in developing the instructions;

(12) Guidance on the use of roll limitation devices such as stabilizers; and

(13) Any other information the owner feels is important to the stability and operation of the vessel.

§ 28.535 Inclining test.

(a) Except as provided in paragraphs (b) and (c) of this section, each vessel for which the lightweight displacement and centers of gravity must be determined in order to do the calculations required in this subpart must have an inclining test performed.

(b) A deadweight survey may be substituted for the inclining test, if there is a record of an inclining test of a sister vessel. A vessel qualifies as a sister vessel if it is built to the same basic drawings and the undocumented weight difference between the two vessels is less than 3 percent of the lightweight displacement of the vessel which was inclined and the location of the longitudinal center of gravity differs less than 1 percent of the vessel's length.

(c) A deadweight survey may be substituted for the inclining test, or the inclining test may be dispensed with, if an accurate estimate of the vessel's lightweight characteristics can be made and the precise location of the position of the vessel's vertical center of gravity is not necessary to ensure that the vessel has adequate stability in all probable loading conditions.

(d) ASTM Standard F 1321–90, with the exception of Annexes A and B, may be used as guidance for any inclining test or deadweight survey conducted under this section.

§ 28.540 Free surface.

(a) When doing the stability calculations required by this subpart, the virtual rise in the vessel's vertical center of gravity due to liquids in tanks must be considered by calculating the following—

(1) For each type of consumable liquid, the maximum free surface effect of a tank, or a transverse pair of tanks, having the greatest free surface effect, in addition to a correction for service tanks; and

(2) The free surface effect of each partially filled tank and hold containing a liquid that is not a consumable or containing fish or a fish product that can shift as the vessel heels. This should include correction for any loose water within the vessel's hull associated with the processing of fish.

(b) The free surface effect of tanks fitted with cross connection piping must be calculated assuming the tanks are one common tank, unless valves that will be kept closed to prevent the transfer of liquids as the vessel heels are installed in the piping.

(c) The moment of transference method may be used in lieu of the inertia method when calculating free surface effects.

§ 28.545 Intact stability when using lifting gear.

(a) Each vessel which lifts a weight over the side, or that uses fishing gear that can impose an overturning moment on the vessel, such as trawls and seines, must meet the requirements of this section if that maximum heeling moment exceeds 0.67(W)(GM)(F/B), in foot-long tons (meter-metric tons), where:

W = displacement of the vessel with the lifted weight or the force on the fishing gear included, in long tons (metric tons);

GM = metacentric height with the lifted weight or force on the fishing gear included, in feet (meters);

F = freeboard to the lowest weather deck, measured at amidships in feet (meters); and

B = maximum beam, in feet (meters).

(b) Except as provided in paragraph (f) of this section, each vessel must meet the requirements of § 28.570 or have at least 15 foot-degrees (0.080 meter-radians) of area under the righting ar curve, after correcting the righting arms for the heeling arm caused by lifting or fishing gear, from the angle of equilibrium to the least of the following:

(1) The angle corresponding to the maximum righting arm;

(2) The angle of downflooding; or

(3) 40° (0.7 radians).

(c) The angle of intersection of the heeling arm curve resulting from the lifting moment or the moment of fishing gear and the righting arm curve must not be at an angle of more than 10° (0.17 radians).

(d) The heeling arm curve resulting from lifting must be calculated as the resultant of the upright heeling moment divided by the vessel's displacement multiplied by the cosine of the angle of heel.

(e) For the purposes of this section, the weight of suspended loads must be assumed to act at the tip of the boom unless the suspended load's transverse movement is restricted, such as by the use of sideboards.

(f) A vessel that operates on protected waters, as defined in § 170.050 of this chapter, must comply with the requirements of this section, except that the area described in paragraph (b) of this section must be at least 10 foot-degrees (0.053 meter-radians).

§ 28.550 Icing.

(a) *Applicability.* Each vessel that operates north of 42° North latitude between November 15 and April 15 or south of 42° South latitude between April 15 and November 15 must meet the requirements of this section.

(b) Except as provided in paragraph (d) of this section, the weight of assumed ice on each surface above the waterline of a vessel which operates north of 66°30′ North latitude or south of 66° South latitude must be assumed to be at least:

(1) 6.14 pounds per square foot (0.423 Newtons per square millimeter) of horizontal projected area which corresponds to a thickness of 1.3 inches (33 millimeters); and

(2) 3.07 pounds per square foot (0.021 Newtons per square millimeter) of vertical projected area which corresponds to a thickness of 0.65 inches (16.5 millimeters).

(c) Except as provided in paragraph (d) of this section, the weight of assumed ice on a vessel that operates north of 42° North but south of 66°30′ North latitude or south of 42° South but north of 66° South latitude must be assumed to be at least one-half of the values required by paragraphs (b)(1) and (b)(2) of this section.

(d) The height of the center of gravity of the accumulated ice should be calculated according to the position of each corresponding horizontal surface (deck and gangway) and each other continuous surface on which ice can reasonably be expected to accumulate. The projected horizontal and vertical area of each small discontinuous surface such as a rail, a spar, and rigging with no sail can be accounted for by increasing the calculated area by 15 percent.

(e) The weight and location of ice must be included in the vessel's weight and centers of gravity in each condition of loading when performing the stability calculations required by this subpart.

§ 28.555 Freeing ports.

(a) Except as provided in paragraph (i) of this section, each decked vessel fitted with bulwarks must be fitted with freeing ports.

(b) Freeing ports must be located to allow the rapid clearing of water in all probable conditions of list and trim.

(c) Except as provided by paragraphs (d) through (h) of this section, the aggregate clear area of freeing ports on each side of the vessel must not be less than 7.6 plus 0.115 times the length of bulwark, in feet, for area in square feet (0.7 plus 0.035 times the length of the bulwark, in meters, for area in square meters).

(d) Except as provided in paragraphs (e) through (h) of this section, for bulwarks which exceed 66 feet (20 meters) in length, the aggregate clear area of freeing ports on each side of the vessel must not be less than 0.23 times the length of the bulwark in feet (0.07 times the length of the bulwark in meters, for area in square meters).

(e) For a bulwark more than 4 feet (1.22 meters) in height, the freeing port area required by paragraphs (c) or (d) of this section must be increased in accordance with the following formula:

$i=[h-4]0.04q$, ($i=[h-1.722].04q$, for metric units), where:

i = increase in freeing port area, in square feet (square meters);

h = bulwark height, in feet (meters); and

q = length of bulwark exceeding 4 feet (1.22 meters) in height, in feet (meters).

(f) For a bulwark less than 3 feet (0.91 meters) in height, the required freeing port area, required by paragraph (c) or (d) of this section, may be decreased in accordance with the following formula:

$r=[3-h]0.04q$, ($r=[h-0.91-h]0.04q$), where:

r = permitted reduction in freeing port area, in square feet (square meters).

h = bulwark height, in feet (meters).

q = length of bulwark which is less than 3 feet (0.914 meters) in height, in feet (meters).

(g) For a vessel without sheer, the freeing port area must be increased by 50 percent.

(h) The area of the freeing ports on a vessel that operates on protected waters need only be 50 percent of the area required by paragraphs (c) or (d) of this section.

(i) Freeing port covers are permitted provided that the freeing port area required by this section is not diminished and the covers are constructed and fitted so that water will readily flow outboard but not inboard.

§ 28.560 Watertight and weathertight integrity.

(a) Each opening in a deck or a bulkhead that is exposed to weather must be fitted with a weathertight or a watertight closure device.

(b) Except as provided in paragraphs (c) through (i) of this section, each opening in a deck or a bulkhead that is exposed to weather must be fitted with a watertight coaming as follows:

(1) For a vessel 79 feet (24 meters) or more in length, the coaming must be at least 24 inches (0.61 meters) in height; or

(2) For a vessel less than 79 feet (24 meters) in length, the coaming must be at least 12 inches (0.30 meters) in height.

(c) A coaming to a fish hold that is under constant attention when the closure is not in place need only be 6 inches (0.15 meters) in height.

(d) The coaming of an opening fitted with a quick-acting watertight closure device need only be of sufficient height to accommodate the device.

(e) Except on an exposed forecastle deck, a coaming is not required on a deck above the lowest weather deck.

(f) Each window and portlight located below the first deck above the lowest weather deck must be provided with an inside deadlight. Each deadlight must be efficient, hinged, and arranged so that it can be effectively closed watertight.

(g) An opening in a vessel below the weather deck which is used for discharging water or debris resulting from processing or sorting operations must be fitted with a means to ensure the opening can be closed weathertight. This means of closing must be operable from a location which is outside the space containing the opening.

§ 28.565 Water on deck.

(a) Each vessel with bulwarks must comply with the requirements of this section.

(b) Except for a vessel that operates on protected waters, the residual righting energy, "b" in Figure 28.565, must not be less than the water on deck heeling energy, "a" in Figure 28.565.

(c) The water on deck heeling energy must be determined assuming the following:

(1) The deck well is filled to the top o the bulwark at its lowest point and the vessel heeled to the angle at which this point is immersed;

(2) Water does not run off through the freeing ports;

(3) Vessel trim and displacement are constant and equal to the values of the vessel without the water on deck; and

(4) Water in the well is free to run-off over the top of the bulwark.

(d) The residual righting energy is the righting energy from the value where the righting arm equals the water on deck heeling arm up to the lesser of the values of 40° (0.70 radians) of heel or the downflooding angle.

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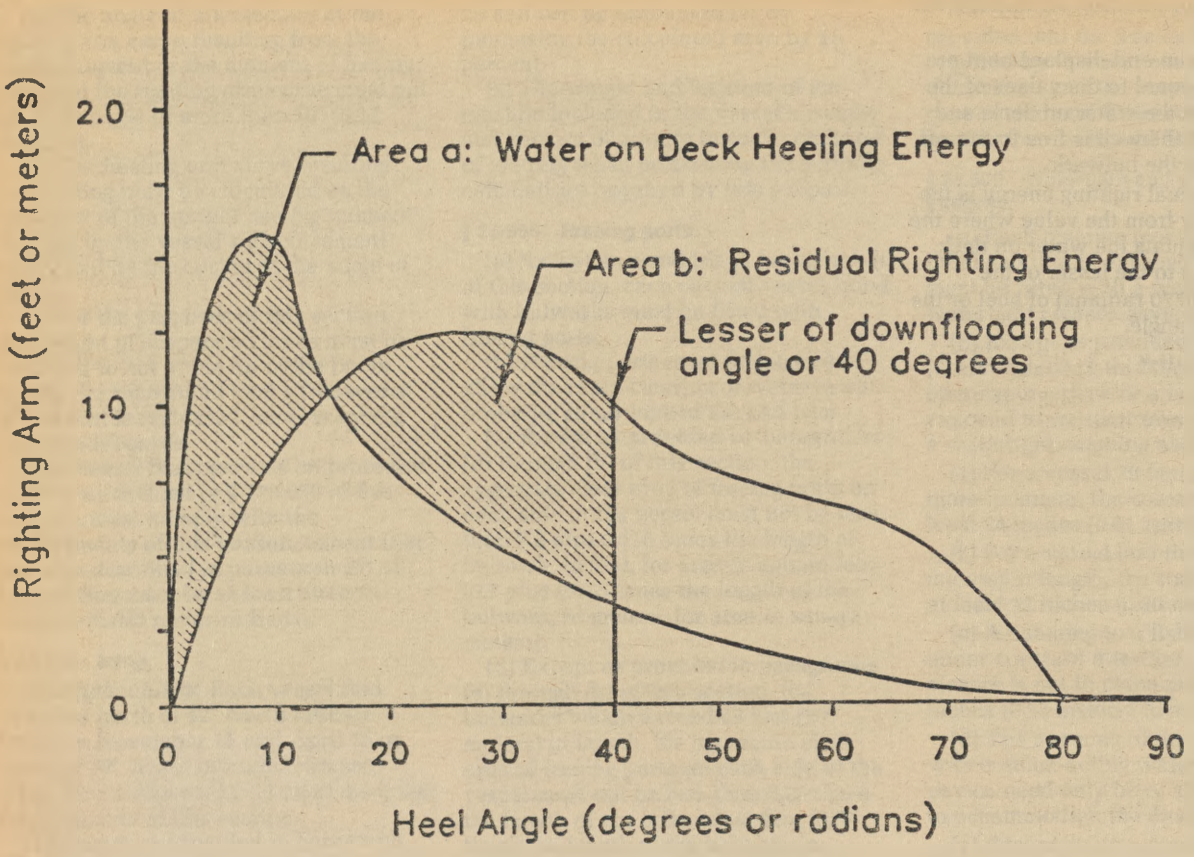


Figure 28.565

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§ 28.570 Intact righting energy.

(a) Except as provided in paragraph (c) of this section, each vessel must have the following properties in each condition of loading:

(1) An initial metacentric height (GM) of at least 1.15 feet (0.35 meters);

(2) A righting arm (GZ) of at least 0.66 feet (0.2 meters) at an angle of heel not less than 30° (0.52 radians);

(3) A maximum righting arm that occurs at an angle of heel not less than 25° (0.44 radians);

(4) An area under each righting arm curve of at least 16.9 foot-degrees (0.090 meter-radians) up to the lesser of 40° (0.70 radians) or the angle of downflooding;

(5) An area under each righting arm curve of at least 10.3 foot-degrees (0.055 meter-radians) up to an angle of heel of 30° (0.52 radians);

(6) An area under each righting arm curve of at least 5.6 foot-degrees (0.030 meter-radians) between 30° (0.52 radians) and the lesser of 40° (0.70 radians) or the angle of downflooding; and

(7) Except as provided by paragraph (b) of this section, positive righting arms through an angle of heel of 60° (1.05 radians).

(b) In lieu of meeting the requirements of paragraph (a)(7) of this section, a vessel may comply with the following provisions:

(i) Hatches in the watertight/weathertight envelope must be normally kept closed at sea (e.g., the live tank hatch is only opened intermittently, under controlled conditions); or

(ii) Unintentional flooding through these hatches must not result in progressive flooding to other spaces; and

(iii) In all cases, a vessel must have positive righting arms through an angle of heel of at least 50° (0.87 radians) and the intact stability analysis must consider that spaces accessed by such hatches to be flooded full or flooded to the level having the most detrimental effect on stability when free surface effects are considered.

(c) In lieu of meeting the requirements of paragraph (a) of this section, a vessel may comply with the provisions of § 170.173(c) of this chapter, provided that righting arms are positive to an angle of heel of not less than 50° (0.87 radians).

(d) For the purpose of paragraphs (a) and (c) of this section, at each angle of heel a vessel's righting arm must be calculated assuming the vessel is permitted to trim free until the trimming moment is zero.

§ 28.575 Severe wind and roll.

(a) Each vessel must meet paragraphs (f) and (g) of this section when subjected to the gust wind heeling arm and the angle of roll to windward as specified in this section.

(b) The gust wind heeling arm, L_w in figure 28.575 of this chapter, must be calculated by the following formula:

$0.00216E_n(V_n^2A_nZ_n)/W$,

where:

E_n = series summation notation where n varies from 1 to the number of elements in the series;

V_n = S[0.124LN(0.3048h_n)+0.772], in feet per second S[0.127LN(h_n)+0.772], in meters per second and is the wind speed for profile element "n" on a vessel;

S = 64 (19.5, if metric units are used) for a vessel that operates on protected waters; or 85.3 (26, if metric units are used) for a vessel that operates on waters other than protected waters;

LN = natural logarithm;

h_n = the vertical distance from the centroid of area A_n to the waterline for profile element n, in feet (meters);

A_n = projected lateral area for profile element n, in square feet (square meters);

Z_n = the vertical distance between the centroid of A_n and a point at the center of the underwater lateral area or a point at approximately one-half of the draft, for profile element n, in feet; and

W = displacement of the loaded vessel, in pounds (Newtons).

(c) The angle of roll to windward, A_1, is measured from the equilibrium angle, A_{el}, and is calculated by the following formula:

$A_1 = 109kXY$[Square root of (rs)], in degrees,

where:

s,X,Y = factors from table 28.575;

$r = 0.73 + 0.6\ Z_g/d$;

Z_g = distance between the center of gravity and the waterline (+ above, − below), in feet (meters);

k = 1.0 for round bilged vessels with no bilge keels or bar keels; 0.7 for vessels with sharp bilges, or the value from table 28.575 for vessels with a bar keel, bilge keels, or both;

B = molded breadth of the vessel, in feet (meters);

d = mean molded draft of the vessel, in feet (meters);

C_b = block coefficient;

A_k = aggregate area of bilge keels, the area of the lateral projection of a bar keel, or the sum of these areas, in square feet (square meters);

L = length, in feet (meters);

T = 1.108 BC/square root of GM, in seconds; 2.0 BC/square root of GM, if metric units are used;

GM = metacentric height corrected for free surface effects, as explained in § 28.540, in feet (meters);

C = 0.373 + 0.023(B/d) − 0.000131L or 0.373 + 0.023(B/D) − 0.00043L, if metric units are used.

(d) The angle of equilibrium, A_{el} in figure 28.575, is calculated by determining the lowest angle at which the gust wind heeling arm, L_w, is equal to the righting arm.

(e) The area "b" in figure 28.575 must be measured to the least of the following:

(1) The angle of downflooding, (A_f);

(2) The angle of the second intercept, A_{e2} in figure 28.575, of the wind heeling arm curve, L_w in figure 28.575, and the righting arm curve; or

(3) A heel angle of 50° (0.87 radians).

(f) The angle of equilibrium, A_{el} in figure 28.575, must not exceed 14° (0.24 radians).

(g) Area "b" in figure 28.575 must not be less than area "a" in figure 28.575.

TABLES 28.575.—Roll Factors

B/d	X
2.4	1.0
2.5	0.98
2.6	0.96
2.7	0.95
2.8	0.93
2.9	0.91
3.0	0.90
3.1	0.88
3.2	0.86
3.3	0.84
3.4	0.82
3.5	0.80

Note. Intermediate values must be obtained by interpolation.

C_b	Y
0.45	0.75
0.50	0.82
0.55	0.89
0.60	0.95
0.93	0.65
0.70	1.0

Note. Intermediate values must be obtained by interpolation.

$100A_k/(LB)$	k
0	1.0
1.0	0.98
1.5	0.95
2.0	0.88
2.5	0.79
3.0	0.74
3.5	0.72
4.0	0.70

Note. Intermediate values must be obtained by interpolation.

T	S
6	0.100
7	0.098
8	0.093
12	0.065
14	0.053
16	0.044
18	0.038

T	S
20	0.035

Note: Intermediate values must be obtained by interpolation.

§ 28.580 Unintentional flooding.

(a) *Applicability.* Except for an open boat that operates on protected waters and as provided by paragraph (i) of this section, each vessel must comply with the requirements of this section.

(b) *Collision bulkhead.* A watertight collision bulkhead must be fitted and must meet the following:

(1) Openings in the collision bulkhead must be kept to a minimum, and each must be fitted with a watertight closure device;

(2) A collision bulkhead must not be fitted with a door below the bulkhead deck;

(3) A penetration or opening in a collision bulkhead must be—

(i) Located as high and as far inboard as practicable; and

(ii) Fitted with a means to rapidly make it watertight which is operable from a location aft of the collision bulkhead;

(4) The collision bulkhead must be located at least 5 percent of the length from the forward perpendicular unless the vessel has a bulbous bow, in which case the forward reference point will be extended by half the distance between the vessel's forward perpendicular and the forwardmost point of the bulbous bow as shown in figure 28.580; and

(5) The collision bulkhead must not be stepped below the bulkhead deck.

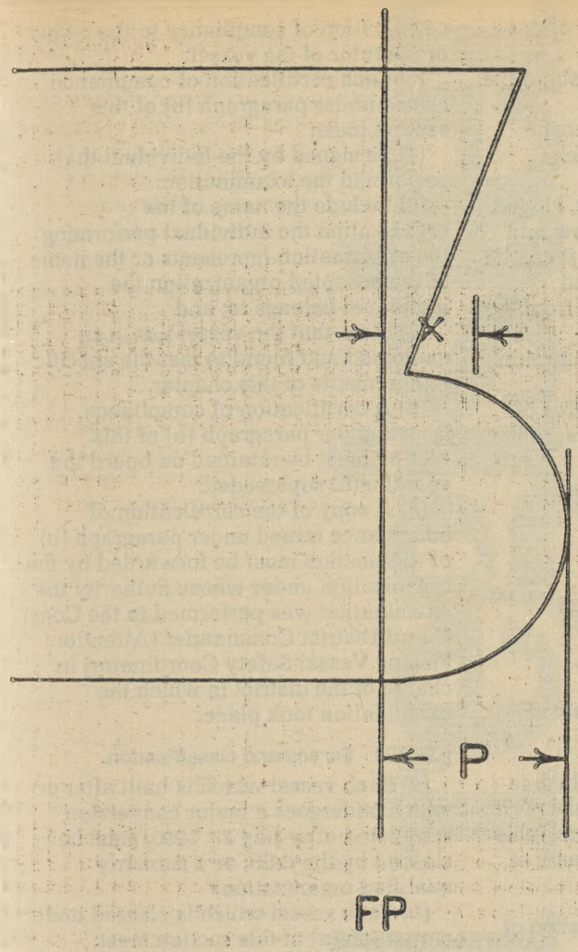
(c) Each vessel must meet the survival conditions in paragraph (f) of this section in each condition of loading and operation with the extent and character of damage specified in paragraphs (d) and (e) of this section.

(d) *Extent and character of damage.* Except where a lesser extent of damage or a smaller penetration would be more disabling, in evaluating the damage stability of a vessel the following penetration must be assumed:

(1) Longitudinal extent—L/10, or 10 feet (3.05 meters) plus 0.03L, whichever is less. Transverse watertight bulkheads that are separated by at least this distance may be assumed to remain effective;

(2) Transverse extent—30 inches (0.76 meters) from the side measured at right angles to the centerline at the level of the deepest operating waterline; and

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$x = P/2$

Figure 28.580

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(3) Vertical extent—from the baseline upward without limit.

(e) Each space containing a through hull fitting, such as the lazarette and the engineroom, must be assumed to be flooded.

(f) *Survival conditions.* A vessel is presumed to survive the assumed damage and unintentional flooding described in paragraphs (d) and (e) of this section if:

(1) The angle of equilibrium after flooding does not exceed 25° (0.44 radians); and

(2) Through an angle of 20° (0.35 radians) beyond the angle of equilibrium after flooding, the following are met—

(i) The righting arm curve is positive;

(ii) The maximum righting arm is at least 4 inches (102 millimeters);

(iii) Each submerged opening is capable of being made weathertight; and

(iv) The heeling arm caused by deploying all fully loaded davit-launched survival craft on one side of a vessel does not exceed the righting arm at any angle of heel beyond the equilibrium angle when launching is assumed on the damaged side.

(g) *Permeability.* The permeability of each space must not be less than the following:

(1) For an accommodations space—95 percent;

(2) For a propulsion machinery space—85 percent;

(3) For a tightly packed storage space—60 percent;

(4) For a void or an auxiliary machinery space—95 percent;

(5) For an empty fish hold—95 percent;

(6) For a full fish hold—50 percent; and

(7) For tanks—95 percent (less if a tank must be full to attain the draft under consideration.)

(h) *Buoyancy of superstructure.* A deckhouse or a superstructure may be included in the buoyant volume of a vessel provided it is:

(1) Sufficiently strong to withstand the impact of waves;

(2) Fitted with a weathertight or watertight closure device for each opening;

(3) Equipped with an efficient, hinged, inside deadlight, for each window and each portlight, arranged so that it can be effectively closed watertight; and

(4) Fitted with interior access from the spaces below.

(i) A vessel may obtain and maintain a Load Line Certificate under Subchapter E of this chapter in lieu of meeting the requirements of paragraphs (c) through (g) of this section.

§ 28.590 [Reserved]

§ 28.600 [Reserved]

§ 28.610 [Reserved]

§ 28.620 [Reserved]

§ 28.630 [Reserved]

Subpart F—Fish Processing Vessel

§ 28.700 Applicability.

Each fish processing vessel which is not subject to inspection under the provisions of another subchapter of this chapter must meet the requirements of this subpart.

§ 28.710 Examination and certification of compliance.

(a) At least once in every two years each vessel must be examined for compliance with the regulations of this subchapter by the ABS, a similarly qualified organization, or a surveyor of an accepted organization.

(b) Each individual performing an examination under paragraph (a) of this section, upon finding the vessel to be in compliance with the requirements of this chapter, must provide a written certification of compliance to the owner or operator of the vessel.

(c) Each certification of compliance issued under paragraph (b) of this section must:

(1) Be signed by the individual that performed the examination;

(2) Include the name of the organization the individual performing the examination represents or the name of the accepted organization the individual belongs to; and

(3) State that the vessel has been examined and found to met the specific requirements of this chapter.

(d) A certification of compliance issued under paragraph (b) of this section must be retained on board the vessel until superseded.

(e) A copy of the certification of compliance issued under paragraph (b) of this section must be forwarded by the organization under whose authority the examination was performed to the Coast Guard District Commander (Attention: Fishing Vessel Safety Coordinator) in charge of the district in which the examination took place.

§ 28.720 Survey and classification.

(a) Each vessel which is built after or which undergoes a major conversion completed after July 27, 1990, must be classed by the ABS, or a similarly qualified organization.

(b) Each vessel which is classed under paragraph (a) of this section must:

(1) Have on board a certificate of class issued by the organization that classed the vessel.

(2) Meet all survey and classification requirements prescribed by the organization that classed the vessel.

Dated: July 31, 1991.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

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federal register

Wednesday
August 14, 1991

Part III

Department of Transportation

Coast Guard

33 CFR Part 117

Drawbridge Operation Regulations, Manasquan River, NJ; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION
Coast Guard

33 CFR Part 117

[CGD1 91-120]

Temporary Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Borough of Point Pleasant Beach and the New Jersey Department of Transportation (NJDOT), the Coast Guard is implementing temporary regulations for sixty (60) days from 1 August through 29 September 1991, for the Route 35 drawbridge across the New Jersey Intracoastal Waterway (ICW)/ (Manasquan River), at mile 1.1 between Brielle and Point Pleasant Beach, New Jersey, by extending the hour and half hour opening schedule on weekends and holidays between 9 a.m. and 10 p.m. through 29 September and by providing for only twice an hour opening during the evening rush hours 4 p.m. to 7 p.m., Monday through Thursday and between 12 p.m. and 7 p.m. on Fridays. The temporary change is being made to examine the effect on vehicular and marine traffic during the above period. This action should accommodate the needs of vehicular traffic, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary final regulation becomes effective 1 August 1991 and terminates 29 September 1991.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212)668-7170.

SUPPLEMENTARY INFORMATION: This temporary final regulation is published in accordance with 33 CFR 117.43 in order to evaluate suggested changes to the drawbridge regulation during this prime recreational boating season. In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for these regulations and good cause exists for making them effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these regulations would not permit evaluation during the prime recreational boating season in August and Septembr when the greatest impacts and benefits would occur. A Notice of Proposed Rulemaking (CGD1-91-119) has been prepared on the proposed permanent regulations and appears in the Proposed Rule Section of this **Federal Register**. Interested persons are invited to participate in the rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes in the proposal.

Drafting Information

The drafters of this notice are Sylvia L. Bowens, project officer, and Lieutenant John B. Gately, project attorney.

Discussion of Comments

Two bridges cross the Manasquan River between Brielle and Point Pleasant Beach. The first at mile 0.9 is owned by New Jersey Transit Rail Operation (NJTRO) and has a horizontal clearance of 48 feet and vertical clearance of 3 feet at mean high water (MHW) and 6 feet at mean low water (MLW). The narrow horizontal clearance normally permit the passage of only one boat at a time through the draw in either direction. During the summer months, Memorial Day to Labor Day, the railroad bridge is normally maintained in the open position and closed 4-5 minutes before the arrival of a train. The second bridge is the Route 35 bridge located at mile 1.1. It has a horizontal clearance of 90 feet and a vertical clearance of 30 feet at MHW and 33 feet at mean low water MLW. The highway bridge presently opens for commercial traffic, sailboats, and recreational power vessels with tuna towers or outriggers. Marine transit time between the Route 35 and the NJTRO bridges is dependent upon the direction of the current, the number of vessels waiting for an opening, and the manueverability and speed of each vessel. The estimated volume of marine traffic transiting the area on weekdays between 6 a.m. and 2 p.m. is over 200 vessels, and between 2 p.m. and 10 p.m. is over 400 vessels. The estimated volume of marine traffic increases on weekends. The estimated transits between 6 a.m. and 2 p.m., on weekends is over 600 vessels, and between 2 p.m. and 10 p.m. the estimate is over 1000 vessels transiting the area. Train schedules substantially govern boat transits on the waterway. Monday through Friday year round, except holidays, the railroad bridge has 14 trains that cross the bridge between 1 a.m. and 12 p.m. and 21 trains cross the bridge between 12 p.m. and 11 p.m. Weekdays, during rush hours between 4 a.m. and 8 a.m., twelve trains cross the bridge, and between 6 p.m. and 9 p.m. eight trains cross the bridge.

Statistics provided by New Jersey Department of Transportation (NJDOT) show that the number of bridge openings for vessels during the past seven years remained relatively constant, averaging 2,300 to 2,400 openings a year with the normal opening taking approximately seven minutes. The number of times when more than two openings in an hour occurred has generally decreased in 1990. Occasional back to back bridge openings have interrupted vehicular traffic for extended periods of time.

This revised schedule of openings from on the hour and half hour, to 15 minutes before and 15 minutes after the hour on weekdays, should help alleviate vehicular traffic congestion and safety problems for recreational and commercial vessels that are caused when they must hold or maneuver between the two bridges when both bridges are in the closed position. The proposed temporary regulation was requested to evaluate the benefits and problems to both vehicular and marine traffic.

The current regulation provides that the draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle, shall open on signal, except that from Memorial Day through Labor Day on Saturdays, Sundays, and Federal holidays from 10 a.m. to 8 p.m., the draw need only open on the hour and half hour. The draw shall open at all times as soon as possible for passage of a public vessel of the United States, state and local vessels used for public safety, commercial vessels and vessels in distress.

The NJDOT plans to conduct a study of highway traffic patterns both north and south of the RT 35 bridge to determine what additional corrective measures are needed to help reduce traffic congestion.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact that the regulation will not prevent mariners from transiting the bridge but requires timing the transit to conform with the established twice an hour opening schedule.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it

will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—[AMENDED]

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

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

2. From 1 August 1991 through 29 September 1991, § 117.733 is amended by suspending paragraph (b) and adding paragraph (k) to read as follows:

Note: Because this is a temporary rule, this paragraph will not be codified in the CFR.

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(k) The draw of the Route 35 bridge mile 1.1 (Manasquan River) across the New Jersey ICW between Brielle and Point Pleasant Beach shall open on signal from August 1 through September 29, 1991 except as follows:

(1) At all times public vessels of the United States, state and local vessels used for public safety, commercial vessels and vessels in distress shall be passed through the draw as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle, horn or a radio request.

(2) From 9 a.m. to 10 p.m., Saturday, Sunday and Federal holidays, the draw need only be opened on the hour and half hour.

(3) From 4 p.m. to 7 p.m., Monday through Thursday except Federal holidays, the draw need only be opened 15 minutes before and 15 minutes after the hour.

(4) From 12 noon to 7 p.m. on Fridays except Federal holidays, the draw need only be opened 15 minutes before and 15 minutes after the hour.

Dated: August 1, 1991.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91–19102 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 91-119]

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Borough of Point Pleasant Beach and the New Jersey Department of Transportation (NJDOT), the Coast Guard is considering a change to the regulation governing the Route 35 highway bridge at mile 1.1, across the New Jersey Intracoastal Waterway (ICW)/(Manasquan River), between Brielle and Point Pleasant Beach, New Jersey. This proposal will extend the hour and half hour opening schedule on weekends and holidays, 15 May through 30 September, currently between 10 a.m. and 8 p.m., to between 9 a.m. and 10 p.m., and provide for twice an hour openings during the evening rush hours between 4 p.m. and 7 p.m., Monday through Thursday and between 12 p.m. and 7 p.m. on Fridays. This proposal is being made because the periods of peak vehicular traffic have changed. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before 15 October 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Sylvia L. Bowens, project officer, and Lieutenant John B. Gately, project attorney.

Discussion of Proposed Regulation

Two bridges cross the Manasquan River between Brielle and Point Pleasant Beach. The first at mile 0.9 is owned by New Jersey Transit Rail Operations (NJTRO), and has a vertical clearance of 3 feet at mean high water (MHW), and 6 feet at mean low water (MLW), with a horizontal clearance of 48 feet. The second bridge is the Route 35 bridge located at mile 1.1, with a vertical clearance of 30 feet at mean high water (MHW) and 33 feet at mean low water (MLW) and a horizontal clearance of 90 feet. The narrow horizontal clearance of the (NJTRO) bridge normally permits only the passage of one vessel at a time through the draw. During the summer months, Memorial Day to Labor Day, the (NJTRO) bridge is normally maintained in the open position and closed 4-5 minutes before the arrival of a train. Marine transit time between the Route 35 and the NJTRO bridges is dependent upon the direction of the current, the number of vessels waiting for an opening, and the manueverability and speed of each vessel. The estimated volume of marine traffic transiting the area on weekdays between 6 a.m. and 2 p.m. is over 200 vessels and between 2 p.m. and 10 p.m. is over 400 vessels. The estimated volume of marine traffic increases on weekends. The estimated transit between 6 a.m. and 2 p.m. is over 600 vessels, and between 2 p.m. and 10 p.m. the estimate is over 1000 vessels transiting the area. Train schedules substantially govern boat transits on the waterway. Monday through Friday year round, except holidays, the railroad bridge has 14 trains that cross the bridge between 1 a.m. and 12 p.m. and 21 trains cross the bridge between 12 p.m. and 11 p.m. Weekdays, during rush hours between 4 a.m. and 8 a.m. twelve trains cross the bridge, and between 6 p.m. and 9 p.m. eight trains cross the bridge.

Statistics provided by New Jersey Department of Transportation (NJDOT) show that the number of bridge openings for vessels during the past seven years remained relatively constant, averaging 2300 to 2400 openings a year with the normal opening taking approximately seven minutes. The number of times when more than two openings in an hour occurred has generally decreased in 1990. Occasional back to back bridge openings have interrupted vehicular traffic for extended periods of time.

Temporary regulations are being implemented for a 60 day period from 1 August to 29 September to evaluate the benefits and problems to both vehicular and marine traffic. The NJDOT plans to study the highway traffic patterns both north and south of the RT 35 bridge to determine what additional corrective measures are needed to help reduce traffic congestion.

The current regulations provide that the draw of the Route 35 bridge shall open on signal, except that from Memorial Day through Labor Day, on Saturday, Sundays, and Federal holidays between 10 a.m. and 8 p.m., the draw need only open on the hour and half hour. The draw shall open at all times as soon as possible for passage of public vessels of the United States or for a vessel in distress. The proposed regulations would extend both the number of weekends and the number of weekend hours when the hour and half hour regulations apply. Additionally, the need and benefit of evening rush hour limitations for the Route 35 bridge are being evaluated. In conjunction with the Route 35 Manasquan River Bridge changes, this section has been simplified and clarified by placing the provision regarding public vessels in paragraph (a) and clarifying the operation of railroad bridges as required by 33 CFR 117.9.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This determination is based on the fact that the regulations will not prevent the mariners from transiting the bridge but just require scheduling their movements to minimize delays and waits at the Route 35 Bridge. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—[Amended]

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–91(g).

2. Section 117.733 is amended by revising paragraphs (a) through (d) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

(a) The following requirements apply to all bridges across the New Jersey Intracoastal Waterway:

(1) Except as otherwise provided in this section, these bridges need not stay open for more than 10 minutes for the passage of vessels nor need they stay closed for more than 10 minutes for the passage of land traffic.

(2) Public vessels of the United States, state or local vessels used for public safety, vessels in distress and vessels with tows shall be passed through the draw of each bridge as soon as possible at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(3) The owners of these bridges shall provide and keep in good legible condition clearance gauges with figures not less than 10 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(4) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed seven minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(5) Except as provided in paragraphs (b) through (j) of this section, the draws shall open on signal.

(b) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) across the New Jersey ICW between Brielle and Point Pleasant Beach shall open on signal except that from May 15 through September 30 the draw need only be opened on the hour and half-hour as follows:

(1) From 9 a.m. to 10 p.m., Saturdays, Sundays, and Federal holidays.

(2) From 4 p.m. to 7 p.m., Monday through Thursday except Federal holidays, and,

(3) From 12 noon to 7 p.m. on Fridays except Federal holidays the draw need only be opened on the hour and half hour.

(c) The draw of the County Route 528 bridge across Barnegut Bay, NJ ICW mile 6.3 at Mantoloking shall open on signal except that on Saturdays, Sundays and Federal holidays, from Memorial Day through Labor Day from 9 a.m. to 6 p.m.; the draw will be opened only on the hour, twenty minutes after the hour and twenty minutes before the hour.

(d) The draw of the 537 bridge across Barnegat Bay, NJ ICW at mile 14.1 at Seaside Heights, shall open on signal except as follows:

(1) From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened.

(2) From Memorial Day through Labor Day from 10 a.m. to 2 p.m. Saturdays, Sundays, and Federal holidays, the draw need only be opened on the hour and half hour.

* * * * *

Dated: August 1, 1991.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91–19103 Filed 8–13–91; 8:45 am]

BILLING CODE 4910–14–M

federal register

Wednesday
August 14, 1991

Part IV

Department of Education

Innovation in Education Program; Notice of Final Priorities for FY 1991

DEPARTMENT OF EDUCATION

Secretary's Fund for Innovation in Education: Innovation in Education Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1991.

SUMMARY: The Secretary announces priorities for Fiscal Year 1991 under the Innovation in Education Program. The Secretary takes this action to implement his strategy for moving America toward the National Education Goals that the President and the Governors have defined. These priorities are intended to help the Secretary identify approaches in school leadership training and teacher training that could be replicated in new programs.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Shirley Steele, U.S. Department of Education, 555 New Jersey Avenue NW., suite 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8399 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: In this notice the Secretary establishes seven final priorities for Academies for School Leaders and Academies for Teachers under the Secretary's Fund for Innovation in Education Program. The purpose of the innovation in Education Program is to provide assistance to State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions or consortia of those entities to conduct projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels.

On May 6, 1991, the Secretary published in the Federal Register (56 FR 21058) a notice of proposed priorities for Academies for School Leaders and Academies for Teachers.

There is only one substantive difference between the proposed and final priorities. The Secretary has clarified that the Academies for School Leaders (Absolute Priority 1) are to serve current school leaders as well as prospective school leaders.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions was published in the Federal Register on June 14, 1991 (56 FR 27648).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 35 parties submitted comments. An analysis of the comments follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Academies for School Leaders

Comments: One commenter strongly supported funding the activities described in the priority through the Leadership in Educational Administration Development (LEAD) Program, authorized by title V, part C, subpart 2 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1109–1109d), rather than creating a new and untried program.

Discussion: As originally authorized, LEAD was designed to be a six-year effort. The statute required that LEAD centers continue their programs and services with diminishing levels of Federal assistance over the maximum six years of Federal assistance authorized, and it required a commitment from grantees to maintain their programs after the expiration of Federal funding. See sections 544(a)(2)(C), 544(b) of the HEA (20 U.S.C. 1109c(a)(2)(C), 1109c(b)). The purpose of the program has been met. Centers have been established in every State, and fiscal year 1991 funds will provide the sixth year of funding authorized. (The territories will receive their final year of funding in 1992.) Because the original purposes have been met, the Administration has proposed that the LEAD program not be reauthorized. However, the Secretary believes academies for school leaders with curricula specifically focused on instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms will assist Governors in their efforts to achieve the National Education Goals.

Change: None.

Comments: The Secretary received a number of comments urging that various individuals and entities be eligible to receive funding for Academies projects. The eligible parties suggested are State administrators, State departments of education, institutions of higher education, and professional associations, Regional Educational Laboratories, and other private, non-profit organizations.

Many commenters also expressed the view that existing LEAD Centers should be eligible; some commenters advocated that LEAD Centers receive a priority.

Discussion: Eligible grantees for all FIE programs are State and local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions or consortia of those entities. See section 4601(b) of the Elementary and Secondary Education Act, as amended (20 U.S.C. 3151(b)). Although individuals are not eligible to apply, all of the entities named by the commenters are eligible.

Because the FIE program statute lists eligible parties, but does not authorize the Secretary to give priority among these eligible parties to certain entities or types of entities, the Secretary does not believe it would be appropriate to give a priority to the existing LEAD Centers. In addition, the Secretary does not wish to restrict competition for these awards. The Centers are, however, encouraged to apply.

Change: None.

Comments: One commenter asked if corporations could be partners in the Academies.

Discussion: Private organizations are eligible for funding under FIE. Corporations may participate as applicants themselves or in partnership with other applicants.

Change: None.

Comments: One commenter asked whether an application proposing an Academy to serve a large number of States (as many as 23) that might be served by State or other regional academies would be eligible for funding.

Discussion: The Secretary's priority specifically states that only one Academy for School Leaders will be funded in a State or multi-State region. The Secretary would consider an application proposing an Academy to serve such a large number of States, but it is unlikely that such an application would be funded given the number of other applications likely to be submitted to serve States within that large region.

Change: None.

Comments: A number of commenters recommended that the Secretary require collaboration between applicants and LEAD centers in the preparation of the application and in the implementation of Academies projects. Other commenters suggested collaboration with

professional associations, with the local educational agencies to be served by an Academy, and, for institutions of higher education, within and across departments.

Discussion: While there is no requirement in the priority for the types of collaboration described by the commenters, the Secretary encourages such collaboration where appropriate.

Change: None.

Comments: Eight commenters recommended that the Academies for School Leaders serve existing school leaders, as well as those desiring to become school leaders.

Discussion: The Secretary agrees that current school leaders should receive training in areas such as school-based management and accountability systems for elementary and secondary schools. The Secretary did not intend to exclude current school leaders from the Academies' activities.

Change: The priority for Academies for School Leaders has been changed to clarify that these Academies must serve current school leaders as well as those desiring to become school leaders.

Comments: One commenter argued against the development of model curriculum for the Academies for School Leaders and suggested field validation and implementation of existing leadership curricula.

Discussion: The Secretary believes that, if schools are to become better and more accountable, both current and prospective principals and other school leaders need to develop knowledge and skills in instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms. In developing a curriculum for an Academy for School Leaders, grantees would be free to use existing curricula to the extent that they provide for the development of knowledge and skills in these areas.

Change: None.

Comments: One commenter asked if an application proposing to conduct an Academy through distance learning and face-to-face conferences would be eligible.

Discussion: The Secretary believes that distance learning strategies could be used by the Academies. Applicants are free to propose how they would use distance learning methods in carrying out the Academies' training programs.

Change: None.

Comments: Several commenters made recommendations for establishing specific curriculum objectives for the Academies for School Leaders and Teachers. One commenter suggested that clearly defined performance objectives for students completing grades 4, 8, and 12 would enhance school leaders' abilities to determine learning objectives for all grades.

Discussion: The first of six defined activities under the proposed priority for Academies for School Leaders calls for the construction of a model curriculum focusing on four components: instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms. The Secretary anticipates that applicants will respond with specific curriculum objectives addressing knowledge and skills in these four areas. With respect to establishing performance objectives for students in grades 4, 8, and 12, the President has recommended the development of World Class Standards for what students should know and be able to do, with students' attainment of the standards measured by a new, voluntary national examination system of American Achievement Tests. The National Council on Standards and Testing established by Public Law 102-62 will make recommendations regarding the development of these standards and tests by December 31, 1991.

Change: None.

Academies for Teachers

Comments: One commenter expressed the hope that teachers in private schools, including religiously affiliated schools, will have the same opportunities to participate in the Academies for Teachers as their colleagues in public schools. Another commenter suggested that the Academies be organized to accommodate teachers in grades K-12 in order to promote continuity and consistency of teaching. This commenter also urged that the Academies serve teachers who are themselves members of underserved populations and those who teach in schools that serve these populations.

Discussion: Academies may serve private school teachers, and the Secretary encourages them to do so, and to select private school teachers for participation on the same basis that the Academies select public school teachers. The Secretary also encourages Academies to make their training programs available to teachers in all grades K-12, and to teachers who are from diverse backgrounds and who teach students of diverse backgrounds.

Change: None.

Comments: One commenter recommended that the priority be changed to allow an Academy to serve a portion of a single large State in order to facilitate geographic proximity of the Academy to the teachers it will serve so that the teachers will have ongoing access to Academy resources

Discussion: The Secretary intends that Governors be involved in the design and operation of the Academies. Therefore, the Secretary intends to fund only one application to provide training to teachers in a given State. However, an individual grantee could propose to operate an Academy by delivering training in more than one location in the State.

Change: None.

Comments: Five commenters suggested that foreign languages should be designated as a core discipline for which separate Academies for Teachers would be funded. Several other commenters recommended various social studies disciplines, such as civics, government, political science, and economics, as core disciplines for the Academies for Teachers.

Discussion: Goal Three of the National Education Goals states that, "By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography." As part of the Secretary's America 2000 strategy, he has chosen to focus Federal resources on Academies for Teachers in the five core disciplines established in Goal Three. However, the Secretary recognizes the importance of instruction in foreign languages and the social sciences, and encourages States and localities to support teacher training in these areas.

Change: None.

Comments: A commenter suggested that the model curriculum for the training of teachers include an opportunity for teachers to develop supplemental materials that they can test in actual classroom work with students. The commenter also suggested that programs operated during the school year be closely related to a summer program, conducted by teachers who assume a leadership role in the summer program, and built into the on-going inservice program of school districts. Another commenter urged that training activities be conducted in an intensive workshop format.

Discussion: The Secretary believes that the commenters' suggestions are good ones, but will leave the decision to adopt these strategies up to the applicants.

Change: None.

Academies for School Leaders and Academies for Teachers

Comments: One commenter suggested that the Academies focus on teaching school leaders and teachers effective strategies to serve at-risk youth. Another commenter urges that Academies be required to demonstate a strong commitment to meeting the educational needs of all students. A commenter suggested that priority be given to Academies that would equip teachers and school leaders with the necessary theory and skills to engage in developmentally appropriate practices in the classroom. A commenter advocated that Academies "reflect" a consortium of resources and concerns, including public and private schools, State agencies, business and industry, and institutions of higher education, involve a network of professionals, and forge a partnership between elementary and secondary and postsecondary education.

Discussion: The Secretary believes that the commenters' suggestions are good ones, but will leave the decision to adopt these strategies up to the applicants.

Change: None.

Priorities

Absolute Priorities: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary sets funds aside separately for each of the following priorities, and funds under each competition only applications that meet the absolute priority.

Absolute Priority 1—Academies for School Leaders (CFDA 84.215N)

Projects to operate training academies for public and private school leaders. Each academy must serve a State or a multi-State region, and the Governors of the States to be served must be consulted in the design and operation of the academy's program. Only one academy in a State or region will be funded. The activities carried out by an academy must include:

- Construction of a model curriculum for the development of school leaders that focuses on instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms;
- Identification of candidates to be trained as new school leaders, including minorities and persons with disabilities, using a carefully designed search process:
- Identification of schools with principal and other school leader vacancies and negotiation with schools and school districts to: Match the trainee-candidates with districts or schools that will sponsor and support the candidates; and identify and support exceptional, experienced principals and other school leaders to serve as mentors to the trainee-candidates;
- Operation of school leadership programs during the school year or during the summer that provide intensive training and development both for persons desiring and demonstrating outstanding promise to become school leaders, and for current school leaders seeking enhanced and up-to-date knowledge needed to perform their job effectively;
- Monitoring and facilitating an internship, as appropriate, for each of the new school leaders who are graduates of the intensive development programs under the guidance and supervision of an experienced school leader; and
- Providing periodic follow-on development activities for the trainees.

Invitational Priorities: Within Absolute Priority 1, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Projects that would match funds provided under this priority with funds from non-Federal sources.

Invitational Priority 2—Projects that would combine the resources of different schools within an institution of higher education, such as the schools of arts and sciences, business or management, and education, or that would provide a similar multidisciplinary approach.

Absolute Priorities 2–7—(Academies for Teachers)

English Academies for Teachers (CFDA 84.215P)
Mathematics Academies for Teachers (CFDA 84.215Q)
Science Academies for Teachers (CFDA 84.215R)
History Academies for Teachers (CFDA 84.215S)
Geography Academies for Teachers (CFDA 84.215T)
Academies for Teachers in the Five Core Disciplines (CFDA 84.215U)

Projects to operate training academies for teachers in each of the five core academic disciplines—English; mathematics; science; history; and geography—and projects to operate single academies that deliver training to teachers in all five disciplines. Each academy must serve a State or a multi-State region, and the Governors of the States to be served must be consulted in the design and operation of the academy's program. Only one academy will be funded in a State or region to deliver training in a given discipline. The activities carried out by an academy must include:

- Development of a model curriculum for the training of teachers that focuses on renewal and enhancement of teachers' knowledge of the core academic discipline or disciplines addressed by the academy; teaching skills and strategies needed to impart academic subject matter to students including students from diverse backgrounds and students with disabilities; the use of educational technologies in teaching the core discipline; and the training that teachers need to become master teachers and to participate in curriculum development;
- Recruitment of teachers within the State or region to participate in the program of the academy, with an effort made to recruit minority teachers, teachers with disabilities, and other teachers who have potential for leadership; and,
- Operation of programs during the school year or during the summer that provide intensive training using the model curriculum development by the academy.
- *Invitational Priority:* Within Absolute Priorities 2–7, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that would match funds provided under this priority with funds from non-Federal sources.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early

notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

There are no regulations for this program. The Education Department General Administrative Regulations in 34 CFR part 75 contain the selection criteria and procedures for review and selection of applications.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number 84.215, Fund for Innovation in Education: Innovation in Education Program)

Dated: August 6, 1991.

[FR Doc. 91-19247 Filed 8-13-91; 8:45 am]

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federal register

Wednesday
August 14, 1991

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Discretionary Programs for Minority Entities and Underrepresented Populations; Notice of Final Priority for FY 1991

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Discretionary Programs for Minority Entities and Underrepresented Populations; Notice of Final Priority for FY 1991

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1991.

SUMMARY: The Secretary announces a priority for fiscal year (FY) 1991 under the Individuals with Disabilities Education Act (IDEA). The Secretary takes this action to implement the Department plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in discretionary programs funded under the Act.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of this priority call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Max Mueller, DPP, OSEP, Department of Education, 400 Maryland Avenue, SW., (Switzer Bldg. room 3512–M/S 2615), Washington, DC 20202–2651. Telephone: (202) 732–1554; (TDD (202) 732–1999).

SUPPLEMENTARY INFORMATION: The legislation authorizing special education programs has recently been revised (The Education of the Handicapped Act Amendments of 1990, Pub. L. 101–476). This priority is being established as a principal component to carry out the Department's outreach services plan that has been developed pursuant to a recommendation made by Congress in section 610(j)(2) of the IDEA. Outreach activities are to be designed to increase the participation of minority entities and underrepresented populations in discretionary programs (parts C through G) of the IDEA.

The publication of this priority does not preclude the Secretary from publishing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Analysis of Comments and Changes

On June 4, 1991, at FR 25454, the Secretary published in the Federal Register, a Notice of Proposed Funding Priority for Fiscal Year 1991. Ten respondents commented on the proposed priority. In general, all commenters were favorable about the need to address the special needs of minority entities in connection with participation in Federal funding programs.

Comment: Several commenters favored considering more than one Center.

Discussion: The Secretary agrees with the points made by these commenters that a single Center could not adequately respond to the diversity of institutional needs and has decided to fund two Centers, one to provide outreach to minorities seeking support for personnel preparation grants (part D), and the other for research and related activities (parts C, E, F, and G).

Change: The priority specifies that one center will be established to deal with part D of the Act and another to deal with parts C, E, F, and G of the Act.

Comment: One commenter suggested that the centers be located in different geographic regions. One commenter recommended the establishment of several related projects based upon specific ethnic, racial and cultural groups. Related to this point, two commenters suggested that American Indians be given special consideration. One commenter recommended the funding of at least three centers that would focus on outreach/technical assistance in the following areas: (a) Training of personnel for careers in special education and related services; (b) research and development and the training of researchers and teacher trainers; and (c) service delivery for individuals with disabilities in preschool through grade 12, with an emphasis on system change and/or demonstration efforts. Four commenters, including this commenter, expressed concern about the proposed priority's lack of emphasis on research and development, and recommended either that a separate research and research training center be established, or that a separate component of a new center be devoted to research.

Discussion: The proposed priority specifically invited public comment on the funding of one or more centers and on the basis for dividing responsibilities in the case of multiple Centers. The proposed priority asked the question of whether the differences among various OSEP programs, the needs of various types of minority entities, or the needs of various minority populations were sufficient to require separate attention through separate awards. The Department believes that a distribution of outreach services funds on the basis of targeting specific ethnic groups would work against many minority institutions whose eligibility for support, i.e., total minority percentage, is based upon student enrollment across minority groups. In addition, it would be most difficult to define precisely how to break down minority entities into ethnic targets or to determine appropriate allocations of funds across those target groups. For these reasons, separate centers based upon ethnic groups is not judged to be feasible. Secondly, in determining how to structure centers, the differences in needs based on regional considerations were judged to be less critical than the differences among the various OSEP discretionary grant programs.

The establishment of centers along OSEP program areas appears to be the most effective division of responsibility. Research and demonstration activities are quite distinct from training activities. The target community and the nature of research and demonstration overlap substantially.

Change: The final priority will call for separate Centers for outreach in connection with (1) personnel preparation and (2) research and other activities.

Comment: Three commenters appeared to suggest that the Department directly fund research, development and evaluation, and personnel training instead of outreach Centers. One of these commenters stated that the major aim of the personnel preparation program, for example, should now be on the training of quality personnel, which would address many of the issues discussed in the Background Statement of the Proposed Priority, such as mislabeling and a higher dropout rate among minority children.

It was not entirely clear from these comments whether the commenters were suggesting a completely separate set of activities related to training in research, development and evaluation, and personnel training; or that technical assistance activities of the proposed centers emphasize helping minority institutions access these types of programs. Under section 610(j)(2)(C) of IDEA upon which the proposed priority was based, the Department cannot divert funds that are specifically targeted by Congress for outreach activities to research or personnel training activities. However, the additional field input on broader issues will be of significant benefit to the Department in developing and soliciting public comment on other Department initiatives.

Change: None.

Comment: Three respondents suggested more emphasis on inclusion of either minority professionals or experts

on minority issues on the Centers advisory group.

Discussion: The priority currently requires inclusion of experts that can be expected to provide appropriate guidance in both minority and disability issues. It also requires inclusion of representatives of relevant professional organizations. The Secretary believes these requirements will ensure that the Center activities appropriately address the needs of minority entities.

Changes: None.

Comment: Two commenters suggested supplementing the workscope of existing outreach and technical assistance projects funded by OSEP, such as the Regional Resource Centers and Clearinghouses, instead of establishing separate Centers. One of these commenters suggested that existing projects would be more economical and responsive to the institutional needs that would vary in different regions of the country.

Discussion: This approach was considered in preliminary planning of the minority initiative. However, current providers have very limited experience in dealing specifically with the needs of minority entities and underrepresented populations. Broad experience in the provision of technical assistance is necessary but not sufficient to meet the particular needs of this initiative. In addition, the proposed priority was sensitive to concerns raised by the commenter over cost-effectiveness by requiring that funded Centers describe a plan for coordinating with other technical assistance providers (e.g. the Clearinghouses) that may be involved in related activities.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) and section 610(j)(2)(C) of the IDEA the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet the absolute priority in this notice.

The Secretary proposes to make two 48-month awards for outreach centers to provide technical assistance to the agencies, institutions, organizations, and populations identified by Congress in the minority outreach program under section 610(j) in order to increase the participation of those entities in competitions for grants, cooperative agreements, and contracts under any of parts C through G of the IDEA.

Background

The IDEA urges the Department to mobilize the Nation's resources to prepare minorities for careers in special education and related services. The legislation emphasizes the recruitment of minorities into teaching and related service disciplines, and financial assistance to minority institutions. The specific focus of this priority is to provide outreach services to minority entities to increase their participation in competitions for awards under OSEP discretionary programs.

The immediate goal of this program is to increase access to and participation by minority institutions in discretionary programs authorized under parts C through G of the IDEA. A secondary goal is to strengthen special education and related programs of minority entities. The desired ultimate outcomes of the priority are improved programs for minority children with disabilities and increased numbers of minority personnel in the workforce serving children with disabilities.

Under the statute, the entities targeted for outreach services are:

- Historically Black Colleges and Universities,
- Other institutions of higher education whose minority student enrollment is at least 25 percent,
- Eligible institutions as defined under section 312 of the Higher Education Act of 1965,
- Nonprofit and for-profit agencies at least 51 percent controlled by one or more minority individuals (however, it should be noted that for-profit agencies are not eligible for most IDEA programs), and
- Underrepresented populations.

Underrepresented populations are further defined as—

- Populations such as minorities, the poor, the limited English proficient, and individuals with disabilities.

The Congress has provided in the legislation a substantial rationale that should guide the efforts of the Centers. As a part of the IDEA (section 610(j)), the Congress has provided extensive "findings" regarding minority issues relating to the education of people with disabilities. Concerns noted relate to minority students with disabilities, minority personnel to serve such children, and minority institutions. Though the findings concentrate largely on Historically Black Colleges and Universities, the law provides for equal attention to other institutions and agencies defined as minority entities.

With respect to the discretionary programs authorized by parts C through G, the Congress found, in summary:

The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

America's racial profile is rapidly changing. The minority population is increasing in society generally and in the schools in particular. In addition, more minority children continue to be served in special education than would be expected from the percentage of minority students in the general population. Greater efforts are needed to prevent the problems associated with mislabeling and higher dropout rates among minority children with disabilities. This combination of factors means that meeting the special needs of minority children with disabilities is a major issue to be addressed in delivery of special education and related services.

At the same time, minorities are seriously underrepresented in the teaching force. As the number of African-Americans and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease. Recruitment efforts within special education at the level of preservice training, continuing education, and teacher recruitment in the school must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

The Congress concluded that the opportunity for full participation in awards for grants, cooperative agreements, and contracts by minority entities is essential if we are to obtain greater success in the recruitment and training of minority personnel and in the education of minority children with disabilities.

Outreach Services to Minority Entities

Under this priority, the Secretary will fund two Centers that provide effective and cost-efficient technical assistance to the agencies, institutions, organizations, and populations listed in section 610(j)(2)(C) to promote their participation in programs authorized under Parts C through G of the IDEA. One center would provide outreach to minority entities seeking support for personnel preparation (part D of the Act), the other for research and the other activities authorized (parts C, E, F, and G).

Each Center shall establish an advisory group of at least 10 persons to

provide advice and recommendations to the Center on all aspects of this project. The advisory group must represent relevant professional organizations, parents of minority children with disabilities, and different disciplinary areas (e.g., special education, health, social work). The Center shall select each member of the advisory group on the basis of experience and ability to provide sound recommendations and advice to the Center relative to both minority and disability issues.

Each Center shall establish and maintain a clearinghouse of critically important information and materials that can be used effectively to assess and meet the technical assistance needs of minority entities and underrepresented groups. As a part of this task, the Center shall, at least annually, conduct literature searches, identify and visit programs demonstrating exemplary practices, and conduct other activities to secure the most current and effective information available. The Center shall also develop materials and other information packages that may be necessary for conducting needs assessments, for delivering technical assistance, for evaluating technical assistance, and for providing training to the Center's core staff and national experts.

Each Center annually shall conduct technical assistance needs assessments and negotiate technical assistance agreements with target agencies, institutions, organizations, programs, and projects.

In establishing final plans, the Center may propose cross-institutional activities if similar objectives are established in several agencies, and if combining activities could create cost savings. In developing these plans, the Center shall analyze the need of each entity and determine the most effective and cost efficient means of addressing them. As a final step, the Center shall develop a specific technical assistance agreement, with each entity identified, that—

(a) Reconciles technical assistance needs with the Center's designated fiscal and human resources for that entity;

(b) Describes the technical assistance objectives and mechanisms and strategies that will be used;

(c) Identifies the persons involved in the technical assistance activity;

(d) Specifies the beginning and end dates of the activity;

(e) Describes how the technical assistance activity will contribute to promoting the immediate and long-term goals of the project; and

(f) Describes a plan for coordinating with other technical assistance providers (e.g., the Regional Resource Centers) that may be involved in related activities.

For each competition which the Secretary runs under parts C through G of the Act, as appropriate, the Center shall—

- Prepare special materials explaining the competition to the entities (that are the focus of this program);
- Disseminate these materials to these entities on a timely basis;
- If appropriate, conduct one or more special "potential bidders" conferences for these entities, at which representatives of the Secretary may appear, to explain in more detail how the entities might apply;
- Analyze the results of each competition in terms of the degree to which these entities applied and the degree to which they were successful, and make this analysis available to the Secretary and the entities; and
- Provide advice to the Secretary at least annually on ways in which competitions under parts C through G of the Act, as appropriate, might be modified to further advance the purposes of this program.

For the purpose of carrying out this function, the Secretary intends to make available to the Centers the maximum information on the selection process for each competition which the Secretary is permitted to make public under applicable law.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Program Authority: 20 U.S.C. 1410.

(Catalog of Federal Domestic Assistance Number 84.029: Training Personnel for the Education of Individuals with Disabilities)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–19257 Filed 8–13–91; 8:45 am]

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federal register

Wednesday
August 14, 1991

Part VI

Department of Education

Program for Children and Youth With Serious Emotional Disturbance; Notice of Final Priorities and Selection Criteria

DEPARTMENT OF EDUCATION

Program for Children and Youth With Serious Emotional Disturbance; Notice of Final Priorities and Selection Criteria

AGENCY: Department of Education.

ACTION: Notice of final priorities and selection criteria.

SUMMARY: The Secretary announces annual funding priorities and selection criteria for the new Program for Children and Youth with Serious Emotional Disturbance to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1991.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3095—M/S 2313–2640), Washington, DC 20202. Telephone: (202) 732–1099. (TDD: (202) 732–6153.)

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED).

Public Comment

In the June 19, 1991 issue of the **Federal Register,** the Secretary invited comments on the proposed priorities and selection criteria. The Secretary did not receive any comments. The Secretary has made no changes in the priorities since publication of the proposed priorities.

Priorities and Selection Criteria

The Secretary establishes the following priorities and selection criteria for the Program for Children and Youth with Serious Emotional Disturbance, CFDA 84.237. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Analyzing the Professional Knowledge Base for Students With Serious Emotional Disturbance (CFDA 84.237).

Issue

Children and youth with serious emotional disturbance represent a large group of unserved and underserved students with disabilities. Students experiencing serious emotional disturbance provide a complex and multi-faceted problem in the delivery of appropriate educational programs. They have one of the highest probabilities of failure in school, work and the community. To improve outcomes for these students the educational community must participate in the development of a plan to identify the most critical areas for improving curricula, instruction, service delivery, and professional development.

Over the past several years, a considerable knowledge base regarding the provision of educational services to individuals with serious emotional disturbance has accumulated. This knowledge base contains programs demonstrated to be effective in obtaining desired student outcomes; research relating to the identification, assessment, instruction, and service delivery system; and the experiences of successful and non-successful instructional personnel. The development of a plan requires an ordering, formatting, and mapping of the knowledge base to identify the critical features that must be addressed.

Background

The Department has been engaging practitioners, researchers, parents, and professional associations in describing current practice and research needs. Current efforts include evaluating outcomes for students with serious emotional disturbance, analyzing definition issues, and compiling information on effective intervention strategies. However, additional information is needed on personnel preparation and placement procedures for students with serious emotional disturbance.

The current efforts in educational reform have highlighted many issues related to teacher preparation. Issues such as teacher competencies, credentialling procedures, and retention are critical to the overall educational reform movement and particularly critical to programs for students with serious emotional disturbance. Research has indicated that teachers in programs for students with serious emotional disturbance have the highest attrition of any teaching group. Yet, little is known regarding their preparation for the teaching profession. There is a critical need to assess our professional knowledge base relative to the structure and content of personnel preparation programs.

Students with serious emotional disturbance provide a unique challenge and place unique demands on service delivery. These students constitute a heterogenous group in terms of academic, social, and emotional needs. As a result of this diversity, a wide range of placement options are required to best address the needs of these students. The extent to which the service delivery system attempts to meet the needs of these students in alternative placements and the process, rationale, and procedures for placement decisions are largely unknown. There is a critical need to address not only the extent to which these students needs are being addressed outside the traditional educational system, but how these students are reintroduced into the system if they have been removed for service.

Purpose

The purpose of this priority is to provide information to support the development of plans for improving outcomes for children with serious emotional disturbance. This priority supports activities designed to identify, organize, interpret, and disseminate the knowledge bases related to personnel preparation and student placement. One award will be funded in each area for up to 24 months duration.

Focus

Each project funded under this priority must develop procedures for:

(a) Identifying and organizing the current state of knowledge;

(b) Interpreting the current state of knowledge to draw implications for research and practice; and

(c) Disseminating the project's findings and interpretations to policy makers, practitioners, parents, and researchers.

Personnel Preparation. It is anticipated that one cooperative agreement will be awarded dealing with the preparation of teachers to work with students with serious emotional disturbance. The project must determine the current status of personnel preparation from at least three perspectives. First, the project must review each State's requirements for teacher licensure and approving

programs for training teachers of students with serious emotional disturbance, and prepare a compendium of these extant data materials. Based on this review of State licensure and approval criteria, the project must develop a conceptual framework that is comprehensive and reflects the complexity contributing to State variations. This comprehensive conceptual framework must be used to select a representative sample of States for subsequent analysis. The comprehensive conceptual framework must be used as the basis for defining the sampling frames for selecting States. Each sampling frame derived from the comprehensive conceptual framework must include at least two or three representative States consistent with that particular frame. The selection of these States must allow for testing for the replication of findings across State entities. The project must provide a comprehensive profile of approaches to State program approval; examples of course sequences and content associated with those sequences; and examples of the knowledge, skills, and competencies required by the States in licensing teachers of children and youth with serious emotional disturbance. This must provide a comprehensive comparison of the various approaches along relevant dimensions identified in the applicant's organizational framework.

Second, the project must compare the accrediting agency (e.g. National Council Accreditation Teacher Education (N.C.A.T.E.)) standards in relation to teacher training for children and youth with serious emotional disturbance. This comparison must include course requirements, and field experiences that impact the design and structure of training programs. However, the comparison need not be limited to these factors and may include other factors that impact the design and structure of training programs deemed relevant by the project. The diversity of approaches currently employed by institutions of higher education to meet accrediting agency standards across States and institutions must be highlighted.

Third, the project must classify approaches to personnel preparation programs for preparing teachers to work with children and youth with serious emotional disturbance. For example, personnel preparation programs might be classified according to the primary roles for which they train personnel such as case managers of instructional services; designers and providers of specially designed instruction; or crisis managers of student behavior. The project must provide a method of classification that will identify the major approaches as a framework for communicating the critical content and process features of personnel preparation programs. This information must be prepared for use by policy makers, researchers, teacher trainers, and other consumers. The project must provide a synthesis of information, gathered from the literature, practitioners, and administrators, that highlights the critical issues related to personnel preparation including the quality of the work environment, alternative career opportunities, and salary studies.

Student Placement Issues. A second cooperative agreement will be awarded for an analysis of placement issues related to children with serious emotional disturbance. In this agreement, the project will address the complex issues relating to placement decisions for children with serious emotional disturbance. Specific attention must be given to the decisions to place children with serious emotional disturbance outside the school system to receive education services (e.g. private hospitals or out of district residential programs), and decisions to return children to their community and school. Projects must provide information on the rationale, procedures, participants, and contexts for those decisions.

Activities

Identification of Knowledge Sources. Projects must provide an initial identification of the source and nature of information to be considered. These information sources may include, but are not limited to:

(1) Research literature; (2) professional literature containing program descriptions and evaluations; (3) State legal and policy documents including applicable regulations and policies; (4) practitioners (including teachers and administrators) involved in the delivery or management of programs for students with serious emotional disturbance; and (5) parents of students with serious emotional disturbance. Information sources may be readily available (e.g., extant data bases or documents) or sources that require that the project access potential sources using a range of methodologies in order to access useful information.

Organization of Knowledge Base. Projects must develop an initial framework for organizing information along relevant dimensions. This framework must provide a map of what is known in the areas of personnel preparation and student placement as it relates to children and youth with serious emotional disturbance. This framework must be developed with input from potential consumers of the information (e.g. policy makers, parents, practitioners, and researchers) so as to ensure the usability and validity of project efforts.

Interpretation of Knowledge Base. Projects must develop detailed descriptions of procedures for analyzing and interpreting information that will provide implications for developing plans for improving outcomes for children with serious emotional disturbance. Procedures must be appropriate for the nature of information collected.

Coordination/Collaboration. Each project must cooperate with the Department to ensure non-duplicative efforts with other projects and maximize efficiency in identifying and obtaining information. Recipients of awards will be required to meet in Washington, DC after award to coordinate project activities. Projects must have access to extant information sources and collaborate with relevant stakeholders in the respective areas. Information must also be shared between relevant projects to ensure that resulting implications for research and practice are as current and complete as possible.

Dissemination Activities. Projects must make available to relevant national, professional, and parent organizations their methods, findings, and interpretations.

National Dissemination and Exchange Forum. Each project must provide draft copies of their findings and interpretations to participants invited to attend a national forum. Project directors must present the results of their activities at the national forum, and participate in discussions with representatives from professional associations, the research community, policy makers, parents, and other parties having significant involvement with children and youth with serious emotional disturbance. It is anticipated that the final drafts of findings and interpretations will be based on the feedback from this forum.

Selection Criteria:

The following selection criteria will be used to evaluate applications for projects submitted under this priority.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for——

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plan for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points)

The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and,

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

(Approved by the Office of Management and Budget under OMB Control No. 1820–0588)

Priority 2: Designing and Implementing A Comprehensive System of Education and Support for Children With Serious Emotional Disturbance (CFDA 84.237).

Issue

Although public school programming for children with serious emotional disturbance has expanded significantly since passage of Public Law 94–142, these children remain an under-identified and underserved population. The Eleventh and Twelfth Annual Reports to Congress on the Implementation of the Education of the Handicapped Act included reported data and findings from the National Longitudinal Study that suggested the inadequacy of current efforts to meet the complex needs of these children. School dropout rates, course failure, and post-school arrest rates of adolescents and young adults with serious emotional disturbance provide clear evidence of the need to provide early and more effective family, school, community, mental health, and social service practices.

The problems of children with serious emotional disturbance are evidenced not only in school settings but also at home and in the community. Children with serious emotional disturbance and their families are likely to become involved with multiple service systems (e.g. education, mental health, juvenile justice, social service, and the child welfare systems). Services are often fragmented due to a lack of coordination between service systems. Effective identification and treatment of children with serious emotional disturbance and their families requires the involvement and expertise of multiple service providers and often of multiple agencies to effect a comprehensive system of services that addresses the child's physical, emotional, social and educational needs.

There have been several promising initiatives to promote comprehensive community based systems of support for children with serious emotional disturbance. However, there remains a critical absence of information on models for integrating school and community assistance and resources to provide the full array of services needed by children with serious emotional disturbance and their families.

Purpose

This priority will support partnerships among school districts, communities, and States for projects that:

(a) Design and assess the feasibility for providing education and support services; and

(b) Develop and implement a comprehensive system of education and support for children with serious emotional disturbance. This priority is structured in two phases:

Phase 1—This phase will support approximately 10 projects to design and assess the feasibility for developing and implementing a comprehensive system of education and support for children with serious emotional disturbance. Phase 1 will be for an 18-month period. A broad spectrum of projects reflecting different contexts (i.e. policy, fiscal, inter-agency relationships, geography, ethnic diversity) will be supported in order to accumulate across projects the full range of issues, options, and designs required to provide a comprehensive system of education and support for children with serious emotional disturbance.

Phase 2—This phase will provide continued support for three to four

projects from Phase 1 for an additional two-year period in order to implement the system design. Although not all projects will be selected for Phase 2, projects must include a plan for both phases.

The purpose of these projects is to identify the issues and options the school districts, communities, and States must address in order to develop a comprehensive system of education and support for children with serious emotional disturbance and their families. Each project must prove the design feasibility of procedures and structures that if implemented would have the capacity for efficiently and effectively providing: early screening and identification, case management, evaluation, comprehensive plan of service (including the Individualized Education Program (IEP)), service continuity, and multi-agency coordination and planning. Projects must design systems to provide education and support services that are available, responsive to diverse and changing needs, coordinated, and provided in a manner assuring continuity in meeting the needs of children with serious emotional disturbance and their families.

Activities

Phase 1. Phase 1 projects must develop a design for a comprehensive education and support system for children with serious emotional disturbance and assess its feasibility for implementation. The Department has substantial interest in these projects being able to collectively contribute to advancing an understanding of the design features and implementation issues and solutions to problems related to developing a comprehensive system of education and care for children with serious emotional disturbance and their families.

School District, Community, and State Site Selection. The project must select a school district, community, and State where two or more public agencies have an historical track record of collaboration, coordination, and resource sharing at the State and community level. Project sites must be selected on the basis of having all or most components of a comprehensive system of education and support for children with serious emotional disturbance. The project sites must be selected where the prerequisite financing, administrative commitment, and experience are consistent with designing and implementing system improvements. Each project, at a minimum, must include the active participation of a local school district, a community mental health agency, and a social service agency. Other agencies such as primary health providers and juvenile justice offices should be encouraged, if appropriate, to participate as part of a comprehensive system. Each project must provide letters of commitment to participate in the design of this comprehensive system.

Site. Each project must determine the range, nature, and frequency of educational and other care needs of children with serious emotional disturbance in its school district and community. Based on this analysis and profile of educational and support needs, each project must review current school and community practice related, but not limited to: early screening and identification, case management and ombudsperson assistance, family participation, evaluation, comprehensive plan of service (including Individualized Education Programs (IEP)), service continuity, and multi-agency coordination and planning. The needs of children with serious emotional disturbance and their families, and the analysis of current practice, provide the template for identifying potential areas for designing system improvement.

Designing System Improvements. For each potential system improvement area identified, projects must determine: (a) The rationale, including support from a reveiw of the literature as well as service provision experience, for giving priority attention to that area; (b) current system limitations; (c) system improvement options considered; (d) criteria for selecting and rejecting various improvement options; and (e) implementation requirements. System improvement options considered must draw on the growing professional knowledge base of effective strategies for:

(1) The appropriate identification and treatment of children with serious emotional disturbance whose families, as a whole, are from racially, ethnically or linguistically diverse populations;

(2) The integration of validated practices into a coordinated system for delivering educational and community services;

(3) The coordinated delivery of a full range of school and community services (e.g., special education, mental health, child welfare, recreation, health, juvenile justice, etc.); and

(4) The successful collaboration between multiple service providers with respect to resources (particularly financial), eligibility criteria, policy and other areas.

The system improvements to be designed must draw from previous special education, mental health, and human services research. Specific interventions may be implemented by educational, related service, or other community service personnel in a range of educational and community based settings, but those personnel and settings must be part of a coordinated system of educational and community services.

Determining Feasibility of System Improvement Design. Each project must determine the capacity and readiness of the school district, community, and State sites to implement each identified potential system improvement in terms of, but not limited to: policy, fiscal, administrative, personnel, attitude, and timeframe implications. Criteria for determining feasibility shall be documented for each proposed system improvement, the arguments for and against each proposed system improvement described, and evidence provided for each potential system improvement as to the likely feasibility of implementation, effectiveness, and impact. Projects must determine critical coordination issues they identify during implementation such as leadership, staff and parent training, and inter-agency relationships.

Collaboration. All Phase 1 projects must cooperate with the Department in providing their reviews of literature and rationale for the selection of designs for improving components of their systems. Projects must budget one trip to Washington, DC to develop a cross-project dissemination product of the rationals for giving priority attention to those areas including support from the reviews of literature. Projects will then be required to use the information derived from this meeting to refine the final development of designs during the last six months of Phase 1.

Phase 2. The selection of up to four projects for the Phase 2 option will be based upon the innovativeness and quality of proposed system improvements, strength of evidence to support feasibility of implementation, contribution to understanding diverse contexts (i.e. geography, inter-agency relationships) thought to affect implementation, evidence of strength of commitment, resources to implement system improvements, realistic timeline for achieving full implementation, and evidence of full participation by parents and advocates.

Implementing System Improvements. Each project selected for Phase 2 implementation must address child and family needs. An implementation

schedule must reflect the rationale for sequencing activities, and evidence of critical implementation support. Procedures for ensuring the integrity of the improvements must be implemented. The implementation of system improvements must be achieved and documentation maintained describing the nature and extent of participation of all relevant parties.

Evaluating Comprehensive System of Education and Support. The primary question being tested is the efficacy and effectiveness of a comprehensive system of education and care for children with serious emotional disturbance and their families. Each project must rigorously study this question. Each project must conduct an evaluation that not only addresses the question of overall efficacy, but the contribution of individual components. The component designs and overall system improvement features must be documented in such a way that others interested in utilizing these designs and system improvement features could evaluate their applicability and potential for implementation in their school district and community. In addition, each project must document and study implementation and exportability of each component as well as the overall model.

Collaboration. The Department has substantial interest in the projects awarded under this priority. This interest includes capturing across projects the full range, nature, and frequency of educational and support needs of children with serious emotional disturbance; current state of school, community, and State services; identification of areas for targeting comprehensive system improvements; and options and rationales for system improvements selected for implementation. This requires each project to cooperate with the Department in designing their studies to permit across-project summary of findings. Projects must also cooperate with the Department in working with coalitions of professional and parent organizations to develop cross-project dissemination materials to be used by those organizations with their respective membership.

Dissemination Activities. Individual projects must make available to relevant national, professional, and parent organizations their methods, findings, and interpretations.

Selection Criteria

The following selection criteria will be used to evaluate applications for projects submitted under this priority.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

(Approved by the Office of Management and Budget under OMB Control No. 1820-0588)

Intergovernmental Review

The Program for Children and Youth with Serious Emotional Disturbance is

subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1426.

(Catalog of Federal Domestic Assistance Number 84.237, Program for Children and Youth with Serious Emotional Disturbance)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-19258 Filed 8-13-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
August 14, 1991

Part VII

Department of Education

Fund for the Improvement of Postsecondary Education—Minority Teacher Training Project; Notice

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education—Minority Teacher Training Project

AGENCY: Department of Education.

ACTION: Notice of Final Priority for Fiscal Year 1991.

SUMMARY: The Secretary announces a priority for fiscal year 1991 under the Minority Teacher Training Project. The priority is intended to encourage activities to increase the number of Hispanics, Blacks and other minorities in the teaching profession.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John L. Hunt, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB–3, Washington, DC 20202–5336. Telephone: (202) 708–8863. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The conference report accompanying Public Law 101–517, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 1991, states that the Department should use $1,000,000, later reduced to $975,987, of the appropriations for the Fund for the Improvement of Postsecondary Education (FIPSE), for a minority teacher training project.

Congress appropriated the funds available for this project under the authority for the Fund for the Improvement of Postsecondary Education (FIPSE), and the competition will be conducted under the FIPSE regulations in 34 CFR part 630. The minority teacher training project is the only project that will be funded under this competition.

On May 21, 1991 the Secretary published a notice of proposed priority for this program (Minority Teacher Training Project) in the **Federal Register** (56 FR 23334). There are no substantive differences between the proposed priority and this final priority.

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition was published in the **Federal Register** on July 17, 1991. That notice contained a technical error. In the first and second sentence of paragraph (a) of the priority, a phrase "institution within the consortium" that appears in each sentence should not have been included and is not included in the final priority in this notice.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, eleven parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Two commenters noted that language in the conference report accompanying Public Law 101–517 suggested that the Minority Teacher Training project be conducted by a consortium of institutions with established track records in training minority teachers. These commenters asked that such consortia be designated as the only eligible applicants under this priority. Another commenter indicated that minority students comprise a major portion of the student population at some community colleges and inasmuch as community colleges often have outreach programs, they too should be included as participants in this initiative.

Discussion: Eligible applicants for FIPSE awards are institutions of postsecondary education, a combination of institutions of postsecondary education, and other public and private educational institutions and agencies. The Secretary does not have the authority to restrict the list of eligible applicants further. However, the Secretary encourages applications from community colleges and consortia with experience in training minority teachers.

Changes: None.

Comments: A few commenters expressed concerns that the proposed priority may limit the recruitment and training effort to a defined local or regional geographical area and not permit a project of national dimensions.

Discussion: A broad nationally focused project which gives consideration to the country's regional and local needs is the ultimate goal of this initiative; however, the Secretary realizes that the current availability of funds will, in part, determine the extent of impact under this project. Nothing in this priority is intended to limit recruitment or training to defined local or regional geographical areas.

Changes: None.

Comments: Two commenters recommended that funds be made available for tuition or stipends for minority students, and one of the two commenters suggested that special academic support services be provided for minority students at the undergraduate and graduate levels.

Discussion: Though funds under this priority may not be used for tuition or stipends, Federal and other student financial assistance for the cost of attendance at institutions of higher education is available to eligible participating students. Funds under this priority may be used to provide special academic support services to student participants when necessary for their success.

Changes: None.

Comments: One commenter recommended amending the language of the proposed priority to provide for activities which will encourage students to consider a career in teaching without requiring them to major in education.

Discussion: The priority does not limit participation in the teacher training program to students who are majoring in education; students pursuing other majors are also eligible to participate.

Changes: None.

Comments: Another commenter suggested that the Secretary add to the priority requirements for program evaluation and the same commenter proposed including as a required activity, the dissemination of successful strategies for minority teacher recruitment and preparation.

Discussion: It is not necessary to add requirements for project evaluation to the priority because evaluation is required by the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.590), and ability to perform evaluation is a selection criterion under the FIPSE program regulations (34 CFR 630.32(b)(2)(ii)). The Secretary encourages, but does not require the dissemination of successful strategies.

Changes: None.

Comments: Several comments suggested to strengthen the proposed priority by adding requirements for training for student participants in multicultural awareness, including cultural commonalities, training methods that aid and encourage learners to become responsible for their own learning, utilization of master teachers in the joint restructuring of methodology courses, and opportunities to acquire skills and experience with new technologies for the classroom.

Discussion: The Secretary considers that the above suggestions may

strengthen projects funded under this priority, and may be incorporated in the activities applicants propose to conduct.

Changes: None.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only an application that meets this absolute priority:

Minority Teacher Recruitment and Training Project

(a) Activities by an institution or institutions of higher education to identify minority students at the secondary and postsecondary levels and encourage them to enter teacher training programs. One of the recruitment activities must be collaboration of the institution or institutions of higher education providing the teacher training with participating local educational agencies (LEAs), including an in-service program for teachers in the participating LEAs.

(b) Specialized teacher training designed to meet the needs of all participating students in teacher training programs to which the minority students are recruited. The teacher training program must include, but is not limited to, instructional and support service activities that address—

(1) Socio-psychological concerns in learning, including learning by minority students;

(2) Language and cultural differences among students;

(3) Culture-sensitive instructional materials for use by participants in the teacher training program;

(4) Training in the effective use of culture sensitive instructional materials in the classroom; and

(5) Joint restructuring of methodology courses between the liberal arts and education facilities.

Funds awarded under this priority are not available for tuition or other costs of the participating students' attendance at institutions of higher education.

For the purpose of this project, "minority" is defined as "American Indian, Alaskan Native, Asian, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban and Central or South American origin), or Pacific Islander."

Intergovernmental Review:

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 630, and the Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) the regulations for this program in 34 CFR part 630, Fund for the Improvement of Postsecondary Education (FIPSE).

Program Authority: 20 U.S.C. 1135–1135a–3.

(Catalog of Federal Domestic Assistance Number—84.116A—Fund for the Improvement of Postsecondary Education)

Dated: August 6, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–19251 Filed 8–13–91; 8:45 am]

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federal register

Wednesday
August 14, 1991

Part VIII

Environmental Protection Agency

40 CFR Chapter I

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Chapter II

Department of Agriculture

Soil Conservation Service

7 CFR Chapter VI

Department of the Interior

Fish and Wildlife Service

50 CFR Chapters I and IV

1989 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands"; Proposed Revisions

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Chapter II

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Chapter VI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapters I and IV

[FRL-3934-4]

1989 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands"; Proposed Revisions

AGENCIES: Environmental Protection Agency; Corps of Engineers, Department of the Army, DOD; Soil Conservation Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule and policy statement; request for comments.

SUMMARY: The Environmental Protection Agency (EPA); Army Corps of Engineers (CE); Department of Agriculture Soil Conservation Service (SCS); and Department of Interior Fish and Wildlife Service (FWS) request public comment on proposed revisions to the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (1989 Manual), an interagency document adopted January 10, 1989. The 1989 Manual provides guidance for identifying and delineating wetlands for various purposes, including determining wetlands under the jurisdiction of the Clean Water Act Section 404 regulatory program.

As a result of experience gained during the two years since the implementation of the 1989 Manual, the following revisions are proposed. The public is invited to review and provide technical comments on these revisions.

DATES: Written comments must be submitted on or before October 15, 1991.

ADDRESSES: Comments should be submitted in writing to: Mr. Gregory Peck, Chief, Wetlands and Aquatic Resources Regulatory Branch, Mail Code (A-104F), U.S. E.P.A., 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Specific details are available from Mr. Michael Fritz (EPA) at (202) 245-3913; Ms. Karen Kochenbach (CE) at (202) 272-0817; Mr. Billy Teels (SCS) at (202) 447-5991; or Mr. Tom Muir (FWS) at (703) 358-2201.

SUPPLEMENTARY INFORMATION:

Background

The regulatory definition of wetlands used by the U.S. Army Corps of Engineers (Corps) (33 CFR 328.3(b)) and EPA (40 CFR 230.3(t)) are the same and have remained unchanged since 1977. The definition utilizes three characteristics of wetlands: Hydrology, vegetation, and soils. Prior to 1989, each agency also had its own procedures for identifying and delineating wetlands, which often differed between, as well as within, these agencies. Recognizing the need for a single, consistent approach for wetland determinations and boundary delineations, the 1989 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" was developed. The Department of Interior Fish and Wildlife Service and the Department of Agriculture Soil Conservation Service also participated in developing the 1989 Manual.

The agencies reached agreement on technical criteria for identifying and delineating wetlands and merged their methods into the 1989 Manual, which was adopted on January 10, 1989, and implemented on March 20, 1989. The 1989 Manual describes the technical criteria, field indicators, and other sources of information necessary to make wetland jurisdictional determinations. This established a uniform national procedure for wetland identification and delineation, and terminated the use of any previous locally implemented approaches by the signatory agencies.

As with the 1989 Manual, the proposed Manual on which we are soliciting public comment is a technical guidance document and provides internal procedures for agency field staff for identifying and delineating wetlands. Both versions of the document serve to advise the public prospectively of the manner in which agency personnel will apply the definition of wetlands to particular sites on a case-by-case basis. We are today providing an opportunity for public comment on the proposed revision prior to their implementation in order to foster public participation in the Manual revision process.

Proposed Revisions

The revision being proposed today will improve the 1989 Manual's accuracy for identifying and delineating wetlands. The position that this Manual is a technical guidance document which is not required by law to go through Administrative Procedure Act (APA) legislative rulemaking procedures has been upheld with respect to the 1989 wetlands delineation manual in *Hobbs* v. *United States*, 32 Env't Rep. Cas. (BNA) 2091 (E.D. Va. 1990), *appeal pending*, No. 90-1861 (4th Cir.). Nonetheless, the agencies believe that it would be appropriate and in the public interest to include parts of the final manual in the Code of Federal Regulations. When the agencies determine what portions of the manual that may be promulgated as a legislative rule, they will provide notice of specific proposed regulatory language in the **Federal Register** at least 30 days prior to the end of the public comment period. The proposed revisions address many of the issues raised in the public comments and public meetings and are intended to minimize the potential for erroneous wetlands determinations. The changes we are developing are not intended to reduce jurisdiction. They are intended to tighten the evidence requirements for the three parameters in the definition of wetlands. In addition we expect that the revised Federal Manual will make it easier for Federal or State agency staff to explain to landowners how wetlands are being delineated and to incorporate technical knowledge derived from its use in the past two years and from improvements in the state of the science. Of paramount importance to us, however, is to maintain and improve the scientific validity of our delineation methods.

Based on two years of experience in implementing the 1989 Manual and on comments received from the public, we have identified several concerns which the proposed revisions to the 1989 Manual address. The revisions that are being proposed are intended to respond to each of these concerns. Comments that focus on these areas of major revision would be most useful to the agencies.

1. Concern that wetlands determinations were based on less than all three of the basis parameters (hydrology, vegetation, and soils), and in some cases on only one parameter.

2. Concern with the concept that 7 days of wetness is not enough to create wetlands.

3. Concern that areas are dry at the surface (potentially all year round) are considered wetlands based on the presence of water as deep as 18 inches below the surface.

4. Concern that under the 1989 Manual wetlands hydrology could be considered

demonstrated even without strong evidence of the presence of water.

5. Concern that actual conditions in the field are not accurately reflected by the method by which the growing season is determined in the 1989 Manual.

6. Concern that the 1989 Manual was developed without meaningful public input.

In addition, we are specifically interested in input regarding the following issues:

Issue 1: The proposed Manual explicitly requires that for an area to be delineated as a vegetated wetland it must have three components: wetlands hydrology, hydric soil, and hydrophytic vegetation. The Manual establishes criteria for each of these three components. It is essential that the revised Manual allow accurate wetlands determinations to be made at any time of the year (i.e., areas should not be incorrectly identified as wetlands because the delineation was conducted during a wet time of year, nor should wetlands be identified incorrectly as upland because the delineation was conducted during normally dry times). The revised Manual clearly must provide the necessary flexibility to perform wetlands determinations throughout the year regardless of normal variations in conditions such as seasonal wetness. It is also essential that the revisions to the Manual not exclude obvious, long-recognized wetland types that clearly satisfy the regulatory definition.

We are soliciting comments on the following alternatives to specifying seasonally harder to identify wetlands types:

(1) Strictly require use of the three criteria, without exceptions,

(2) Specifically identify wetland types, including identification of useful wetland indicators, and

(3) Allow agency staff to use best professional judgement supported by documented field evidence to determine whether areas that fail to meet all three criteria are wetlands.

Issue 2: The proposed Manual identifies several secondary indicators of wetlands hydrology. We are requesting comments on the technical validity and usefulness of these indicators.

In addition, we request comments on whether or not water stained leaves, trunks or stems that are grayish or blackish in appearance as a result of being under water for significant periods should be included as an indicator of hydrology, their reliability as indicators of hydrology during the growing season, and whether they should be a primary or secondary indicators.

Issue 3: The proposed Manual recognizes that there are examples of wetlands which meet the regulatory definition, but which sometimes may meet only two of the three wetland criteria. As described in the revised Manual, these wetlands include prairie potholes, vernal pools, playa lakes, pocosins, and other special wetlands that fail the hydrophytic vegetation criterion. The proposed Manual identifies these wetlands as exceptions, but includes them by specific reference as jurisdictional wetlands. We are requesting comments on the technical validity of this approach, whether additional wetland types should be included as exceptions (such as Pitch Pine Lowlands in the Northeast (New Jersey and Long Island), Jack Pine and White Spruce in Evergreen Forested Swamps of the Northern Midwest, Lodgepole Pine Bogs and Muskegs in the Northwest and Alaska Coasts, Sugar Maple and Paper Birch Swamps and Bogs in the upper Midwest, and Longleaf Pine Wet Savannahs of the Southeast) and recommendations for identifying appropriate indicators for each of the wetland types listed as exceptions.

Issue 4: The 1989 Manual will remain in effect until the revised Manual becomes final. Agency staff who are making wetland delineations before the revised Manual becomes final, will be advised to apply caution in making wetland delineations that could be potentially inconsistent with these proposed revisions. Any landowner whose land has been delineated a wetland after the revised Manual is proposed but before the proposed revised Manual becomes final may request a new delineation following publication of the final revised Manual. However, final actions, such as permit issuances or completed enforcement actions, already taken on wetlands delineated under the 1989 Manual will not generally be reopened. In addition, a landowner whose property has been identified as a wetland during a seasonal dry period or drought can request a re-evaluation in the field during the wet season of the year.

In addition, the agencies are soliciting comment on the likelihood of sites being delineated during the dry season as wetland that, if the delineation had occurred during the wet season, would not have met the hydrology criterion. Should requests for re-evaluations be limited to certain cases or should all requests be granted?

Issue 5: The agencies are particularly interested in soliciting comments on including the Facultative Neutral test as part of the hydrophytic vegetation criterion in addition to the proposed prevalence index approach. Under this approach the criterion would be met if after discounting all dominant facultative (FAC) plants, the number of dominant obligate wetland (OBL) and facultative wetland (FACW) species exceeds the number of dominant facultative upland (FACU) and obligate upland (UPL) species.

(Note: When a tie occurs or all dominant species are FAC, the prevalence index procedure will be used.)

The agencies are also interested in soliciting comments on variants of the FAC Neutral test including one or more of the following:

(1) When there are not more than a one species difference between the number of OBL/FACW species and the number of FACU/UPL species (e.g., 6 vs 7 or 4 vs 3), the prevalence index will be used.

(2) When there are only four or less non-FAC dominant species in all strata, the prevalence index will be used.

(3) OBL and UPL species will be given twice the weight as FACU and FACW when calculating number of wetland and upland species in the FAC neutral test (e.g., 3 OBL (x2) + 2 FACW (x1) = 8>6 FACU (x1) + 0 UPL (x2) = 6 (FAC still neutral)).

(4) Change the lower cutoff for including a vegetational type (e.g., trees or shrubs) as a valid stratum from five percent to two percent for areal cover.

(5) When more than 50% of the dominant species are FAC, the prevalence index procedure will be used.

(6) Change the lower cutoff for including additional dominant species beyond the 50% predominance level from twenty percent to ten percent of the strata.

The FAC neutral test is less burdensome and quicker to perform than the prevalence index because it requires an evaluation of only the dominant species and not all plants. This could result in substantial resource savings and quicker permit reviews. Many believe that the FAC neutral test is reliable in most situations. The agencies are interested in any information about the reliability of the FAC neutral test to demonstrate the presence or absence of hydrophytic vegetation. To the extent commentors believe there are weaknesses to the FAC neutral test, do any of the suggested six variants (or variations to them) alone or in combination improve the tests's reliability sufficiently for use in measuring hydrophytic vegetation?

Procedures that would be used to implement the FAC neutral test are described in the Appendices to the Manual.

Issue 6: The proposed Manual provides that the wetlands hydrology criterion may be met by documenting at least three years of hydrologic records (e.g., groundwater well observations or tide or stream gauge records) collected during years of normal rainfall (amount and monthly distribution) which is correlated with long-term hydrologic records for specific geographical areas. The three annual observation periods must have at least 90 percent of average yearly precipitation and at least 90 percent of normal monthly distribution. In addition, the year prior to the water table study must have had 90 percent of the monthly and annual precipitation. We are soliciting comments on whether this 90 percent requirement is appropriate, or should other cutoff levels be used (e.g., plus or minus one or two standard deviations)?

Issue 7: In addition, we are soliciting comments on the basic approach taken in the Manual of delineating every site individually. Is this the best approach? Could the Manual be streamlined so that "obvious" identifications and delineations can occur more quickly with less unnecessary work? It is desirable to identify easily recognized wetlands (for example, *Spartina alterniflora*) coastal marshes), easily recognized uplands (for example, mountainside (other than seeps) or deserts), or wetlands of overriding significance and value (for example, prairie potholes), that can be identified and delineated rapidly and without the need for extensive documentation? If this would be desirable, how should it be done? What should the categories be, what systems should be included, and how should they be described? Can the categories be described such that the wetland/upland boundary are clearly recognized, or will it be necessary to use the mandatory criteria proposed in the Manual to determine the boundary? If this were to be done, should it be on a nationwide or regional basis? What process should be followed—should technical committees be formed to develop these categories and identify communities within each category, or should the categories and communities be developed through a public notice and comment process, or should a combination of both be used?

Issue 8: The proposed Manual defines the growing season as the interval between 3 weeks before the average date of the last killing frost in the Spring to 3 weeks after the average date of the last killing frost in the Fall, with exceptions for areas experiencing freezing temperatures throughout the year (e.g., montane, tundra and boreal areas) that nevertheless support hydrophytic vegetation. We are soliciting comments on whether this is an appropriate definition of the growing season and if not, are there other more appropriate alternatives.

It is important to emphasize that the purpose of this notice is to request comments on the proposed revisions to the 1989 Manual. The comments should not address broader policy issues regarding the implementation of the Section 404 regulatory program which this document does not address. General information and questions about wetlands protection can be directed to the EPA Wetlands Hotline at (800) 832–7828.

It is also important to note that an independent testing panel, as well as EPA and the Corps, will perform field testing of these proposed revisions during the comment period. The results of these tests will be reviewed, in conjunction with the comments received from the public, in finalizing the revised Federal Manual. The proposed revisions do not contain a glossary, references, data sheets and regional indicators of significant soil saturation which will accompany the final revised Federal Manual.

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Nancy Dorn,

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Part I Introduction
Part II Mandatory Technical Criteria for Vegetated Wetland Identification
Part III Methods for Identification and Delineation for Vegetated Wetlands
Appendices

Authorities: 33 U.S.C. 1344; 16 U.S.C. 3801–3823, 3841–3844; 16 U.S.C. 3801; 16 U.S.C. 661

Part I. Introduction

Purpose

The purposes of this manual are: (1) To provide mandatory technical criteria for the identification and delineation of wetlands, (2) to provide recommended methods for vegetated wetlands identification and upper boundary delineation, and (3) to provide sources of information to aid in their identification. The document can be used to identify jurisdictional wetlands subject to section 404 of the Clean Water Act and to the "Swampbuster" provision of the Food Security Act of 1985, as amended, or to identify vegetated wetlands in general for the National Wetlands Inventory and other purposes. Wetland jurisdictional determinations for regulatory purposes are based on criteria in addition to technical criteria, so consult the appropriate regulatory agency for its interpretation. The term "wetland" as used throughout this manual refers to vegetated wetlands. This includes wetlands with natural vegetation and wetlands where natural vegetation has been temporarily disturbed. This manual provides a single, consistent approach for identifying and delineating these wetlands from a multi-agency Federal perspective. This manual establishes criteria to be used by the four signatory agencies in delineating wetlands and their boundaries. The Federal government for purposes of exercising the respective agencies' statutory authorities, has the burden of proving that a particular site is a wetland. If an agency fails to meet its burden of proof then the site is not a wetland.

Organization of the Manual

This manual is divided into three major parts: Part I—Introduction; Part II—Mandatory Technical Criteria for Vegetated Wetland Identification; and Part III—Methods for Identification and Delineation of Vegetated Wetlands.

Use of the Manual

This manual should be used for the identification and delineation of vegetated wetlands in the United States. Emphasis for delineation is on the upper boundary of wetlands (i.e., wetland-upland boundary) and not on the lower boundary between wetlands and other aquatic habitats. The technical criteria for wetland identification presented in Part II are mandatory, while the methods presented in Part III are recommended approaches. Alternative methods are offered to provide users with a selection of methods that range from office determinations to detailed field determinations. If the user departs from these methods, the reasons for doing so should be documented. If there are any inconsistencies between Parts I, II, and III, the guidance provided in Part II has preeminence over guidance provided in the other parts.

Background

At the Federal level, four agencies are principally involved with wetland identification and delineation: Army

Corps of Engineers (CE), Environmental Protection Agency (EPA), Fish and Wildlife (FWS), and Soil Conservation Service (SCS). The CE and EPA are responsible for making jurisdictional determinations of wetlands regulated under Section 404 of the Clean Water Act (formerly known as the Federal Water Pollution Control Act, 33 U.S.C. 1344). The CE also makes jurisdictional determinations under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under section 404, the Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits for the discharge of dredged or fill material into the waters of the United States, including wetlands. EPA has an important role in developing the Section 404(b)(1) Guidelines and defining the geographic extent of waters of the United States, including wetlands. The CE also issues permits for filling, dredging, and other construction in certain wetlands under Section 10. Under authority of the Fish and Wildlife Coordination Act, the FWS and the National Marine Fisheries Service review applications for these Federal permits and provide comments to the CE on the environmental impacts of proposed work. In addition, the FWS is conducting an inventory of the Nation's wetlands and is producing a series of National Wetlands Inventory maps for the entire country. While the SCS has been involved in wetland identification since 1956, it has recently become more deeply involved in wetland determinations through the "Swampbuster" provision of the Food Security Act of 1985, and the 1990 amendments.

Prior to the adoption of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" by the four agencies in 1989, each agency had its own procedures for identifying and delineating wetlands. The CE and EPA developed technical manuals for identifying and delineating wetlands subject to Section 404 (Environmental Laboratory 1987 and Sipple 1988, respectively), yet neither manual was a nationally-implemented standard even within the agencies. Consequently, wetland identification and delineation remained inconsistent. The SCS developed procedures for identifying wetlands for compliance with "Swampbuster" which were adopted by the agency for national use in 1987 (7 CFR part 12). While it has no formal method for delineating wetland boundaries, the FWS has established guidelines for identifying wetlands in the form of its official wetland classification system report (Cowardin, et al. 1979). These varied agency approaches and lack of standardized methods resulted in inconsistent determinations of wetland boundaries for the same type of area. This created confusion and identified the need for a single, consistent approach for wetland determinations and boundary delineations.

In early 1988, the CE and EPA resumed previous discussions on the possibilities of merging their manuals into a single document and establishing it as a national standard within the agencies, since both manuals were produced in support of Section 404 of the Clean Water Act. The FWS and SCS were invited to participate, thereby creating the Federal Interagency Committee for Wetland Delineation (Committee) with each of the four agencies (CE, EPA, FWS, and SCS) represented.

The four agencies reached agreement on the technical criteria for identifying and delineating wetlands and merged their methods into a single wetland delineation manual, which was published on January 10, 1989 as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands". This established a national standard for wetland identification and delineation, and terminated previous locally implemented approaches that were not, in some cases, scientifically based nor consistent. Further, adoption of the manual in 1989 resulted in some changes in the scope of regulatory jurisdiction in some agency field offices.

During the following two years, the 1989 manual was used by the agencies for wetland delineation, chiefly for identifying and delineating wetlands subject to federal regulations under the Clean Water Act. Unfortunately, during this time many misconceptions of the 1989 manual (e.g., classifying any area mapped as hydric soil as wetland without considering other criteria), and other factors created an obvious need to review the 1989 manual and revise it accordingly. From the outset, the four agencies recognized that additional clarification and/or changes might be required.

Accordingly, in May 1990, the agencies initiated an evaluation of the 1989 manual, which consisted of several steps:

1. Formal field testing was conducted by the Environmental Protection Agency to evaluate the sampling protocols of the 1989 manual (Sipple and DaVia 1990);

2. Reviews by agency field staff using the 1989 manual;

3. To afford the public the opportunity to comment on the technical aspects of the 1989 manual, public meetings were held in Baton Rouge, Louisiana, Sacramento, California, St. Paul, Minnesota, and Baltimore, Maryland; and

4. Written comments on the technical aspects of the 1989 manual were also accepted subsequent to the meetings to give the public ample opportunity to express any concerns. More than 500 letters were received and reviewed.

The technical comments were reviewed by the four agencies and considered for incorporation into a revised manual. The agencies concluded that while the manual represented a substantial improvement over pre-existing approaches, several key issues needed to be re-examined and clarified. Some of the key technical issues needing re-examination were: (1) The wetland hydrology criterion, (2) the use of hydric soil for delineating the wetland boundary, (3) the assumption that facultative vegetation indicated wetland hydrology, and (4) the open-ended nature of the determination process which created opportunities for misuse.

The wetland hydrology criterion in the 1989 manual included a series of requirements related to specific soil types (soil drainage classes). Looking for water tables at various depths depending on soil drainage class was confusing, especially since properties associated with soil drainage classes are not standardized across the country. The National Technical Committee for Hydric Soils (NTCHS) criteria for defining hydric soils were adopted in the 1989 manual. The hydric soil criterion included wetland hydrology requirements to identify those soils wet enough to be hydric. In adopting the NTCHS hydric soil criteria, the 1989 manual retained the hydrology requirements under its hydric soil criterion and also in effect, repeated them as the wetland hydrology criterion. This clearly gave the impression of a less than three criteria approach to wetland identification.

Perhaps the issue that engendered the most concern over potential misuse of the 1989 manual involved the use of hydric soils for wetland identification and delineation. Since the 1989 manual included wetland hydrology requirements within the hydric soil criterion, and the delineation methods relied on hydric soil properties to delineate the wetland boundary, some users got the impression that the 1989 manual was not based on three mandatory criteria, but rather based solely on one criterion—the hydric soil

criterion (since it, in fact, embodied the wetland hydrology criterion). This, by itself, was not a significant problem, since hydrology was still considered. Some users then erroneously translated this to mean that any area mapped as a hydric soil series was a wetland. However, it was the clear intent of the agencies that specific soil properties derived directly from wetland hydrology (e.g., significant soil saturation) would be used to separate those members of hydric soil series that were associated with wetlands from those that were not. Hydric soil mapping units include significant acreage of phases of these soils that were never wetland or no longer meet the wetland hydrology requirements of the hydric soil criterion (i.e., dry phases and drained phases, respectively) as well as inclusions of nonhydric soils.

By considering any mapped hydric soil area as wetland, millions of former wetlands (now effectively drained) could be misidentified as wetland. This grossly exaggerated the extent of "jurisdictional wetlands" present in the United States. While the presence of certain plants were required to separate vegetated wetlands from nonvegetated wetlands, they were not used to help identify the upper boundaries, although they can be very useful indicators in certain cases where hydrology has been altered or where soil properties themselves are difficult to interpret. Consequently, by ignoring plant composition on the upper end of the wetland/upland gradient and by erroneously using mapped boundaries of hydric soil units to delineate wetland boundaries, errors in judgment were possible.

The 1989 manual specified three mandatory criteria, but did not require the use of various indicators to verify these criteria, although the interrelationships were presented. This allowed individuals to develop their own indicators or ignore strong indicators in determining whether a particular criterion was met. Clearly, the criteria needed to be intricately linked to a limited set of field indicators to prevent their misuse.

A series of meetings of the four agencies were held during the period of October 1990 through April 1991. Major revisions to the 1989 manual were made to correct the technically-based shortcomings addressed above, reduce misinterpretations and the possibility of erroneous wetland determinations, and better explain the manual's usage.

Federal Wetland Definitions

Several definitions have been formulated at the Federal level to define "wetland" for various laws, regulations, and programs. These definitions are cited below with reference to their guiding document along with a few comments on their key elements.

Section 404 of the Clean Water Act

The following definition of wetland is the regulatory definition used by the EPA and CE for administering the Section 404 permit program:

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (EPA, 40 CFR 230.3, December 24, 1980; and CE, 33 CFR 328.3, November 13, 1986).

This definition emphasizes hydrology, vegetation, and saturated soils. The section 404 regulations also deal with other "waters of the United States" such as open water areas, mud flats, coral reefs, riffle and pool complexes, vegetated shallows, and other aquatic habitats. Both EPA and CE regulations (cited above) implementing this definition were subject to formal rulemaking public notice and comment procedures in accordance with the Administrative Procedures Act (5 U.S.C. 553).

Food Security Act of 1985 (as amended)

The following wetland definition is used by the SCS for identifying wetlands on agricultural land in assessing farmer eligibility for U.S. Department of Agriculture program benefits under the "Swampbuster" provision of this Act:

Wetlands are defined as areas that have a predominance of hydric soils and that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.* (National Food Security Act Manual, 1988 and revised editions)

*Special Note: The Emergency wetlands Resources Act of 1986 also contains this definition, but without the exception for Alaska.

This definition specifies hydrology, hydrophytic vegetation, and hydric soils. Any area that meets the hydric soil criteria (defined by the national Technical Committee for Hydric Soils) is considered to have a predominance of hydric soils. The definition also makes a geographic exclusion for Alaska, so that wetlands in Alaska with a high potential for agricultural development and a predominance of permafrost soils are exempt from the requirements of the Food Security Act.

Fish and Wildlife Service's Wetland Classification System

The FWS in cooperation with other Federal agencies, State agencies, and private organizations and individuals developed a wetland definition for conducting an inventory of the Nation's wetlands. This definition was published in the FWS's publication "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al. 1979):

Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) At least periodically, the land supports predominantly hydrophytes, (2) the substrate is predominantly undrained hydric soil, and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

This definition includes both vegetated and nonvegetated wetlands, recognizing that some types of wetlands lack vegetation (e.g., mud flats, sand flats, rocky shores, gravel beaches, and sand bars). The classification system also defines "deepwater habitats" as "permanently flooded lands lying below the deepwater boundary of wetlands." Deepwater habitats include estuarine and marine aquatic beds (similar to "vegetated shallows" of section 404), although aquatic beds in shallow fresh water are considered wetlands. Open waters below extreme low water at spring tides in salt and brackish tidal areas and usually below 6.6 feet in inland areas and freshwater tidal areas are also included in deepwater habitats.

Relationship of Wetlands Identified by This Manual to "Waters of the United States"

This manual is used to identify and delineate vegetated wetlands. Figure 1 presents a generalized landscape continuum from upland to open water (deepwater habitat) showing the relationship of the various Federal wetland definitions. Vegetated wetlands as used herein means areas that, under normal circumstances, usually have

hydrophytic vegetation, hydric soil, and wetland hydrology. Further, this manual applies to areas that are vegetated by erect, self-supporting vegetation (e.g., vegetation extending above the water's surface in aquatic areas or free-standing on soil).

Vegetated wetlands identified by this manual are a subset of areas regulated as "Waters of the United States" under section 404 of the Clean Water Act, and one of the areas regulated as "special aquatic sites" under the section 404(b)(1) Guidelines promulgated by the Environmental Protection Agency. Other "special aquatic sites" include mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges. Open water areas are also part of the "Waters of the United States."

Vegetated wetlands identified by this manual are also a subset of those areas designated as wetlands under the FWS's "Classification of Wetlands and Deepwater Habitats of the United States." The FWS definition of wetland is used for National Wetlands Inventory and is nonregulatory in nature. The only differences between wetlands identified by FWS and this manual are those aquatic areas 6.6 feet or less in depth that do not contain emergent vegetation, or are unvegetated. Such areas are identified as wetlands under the FWS system, but not under the manual. However, there are few if any areas covered by the FWS classification system that are not covered under section 404. For vegetated wetlands, the FWS classification system and this manual are essentially identical. Ninety-four percent of all FWS-classified wetlands in the coterminous United States are vegetated.

The emphasis of this manual is on the boundary between wetland and upland, since that is the area most often in question and where determinations and delineations become most difficult. However, wetland determinations in lower wetter areas are generally easy to make and seldom in question from a regulatory standpoint since both wetland and open water are regulated areas. Generally, as one moves from areas with standing water to dry upland areas, it is those lands at the margin that are most difficult to distinguish. This manual recognizes this fact and requires less rigorous investigation in obvious wetland situations than in areas which may be questionable. In either situation, however, documentation supporting a delineation is required.

The definitions of wetlands used for section 404 of the Clean Water Act and the Swampbuster provision of the 1985 Food Security Act, as amended, are specific to vegetated wetlands or wetlands that are vegetated under normal circumstances. These are the wetlands to which the manual applies. This manual provides for the consistent identification and delineation of these wetlands in the field. Because this manual was developed to resolve differences in identifying wetlands under these definitions, it is limited to vegetated wetlands and does not address nonvegetated wetlands.

Wetland determinations made through the use of this manual for the purposes of determining Federal wetland jurisdiction at a site are subject to modification in accordance with legal and policy considerations of the applicable regulatory program. For example, section 404 regulatory jurisdiction in wetlands is limited to areas that are waters of the United States because they have a connection with interstate or foreign commerce. Another example is the application of Federal wetland jurisdiction on cropland which is subject to agency policy-based interpretations of such matters as the relative permanence of the cropping disturbance and its effect of hydrophytic vegetation and/or wetland hydrology. Such matters generally are not addressed in this manual; rather, the appropriate agency policy should be consulted in conjunction with the manual for wetland determinations in such areas.

Any landowner whose land has been delineated a wetland after the revised manual is proposed but before the proposed revised manual becomes final may request a new delineation following publication of the final revised manual. However, final actions, such as permit issuances or completed enforcement actions, already taken or wetlands delineated under the 1989 manual will not generally be reopened.

Summary of Federal Definitions

The CE, EPA, and SCS wetland definitions include only areas that are vegetated under normal circumstances, while the FWS definition encompasses both vegetated and nonvegetated areas. Except for the FWS inclusion of nonvegetated areas and aquatic beds in shallow water as wetlands and the exemption for Alaska in the SCS definition, all four wetland definitions are conceptually the same; they all include three basic elements—hydrology, vegetation, and soils—for identifying wetlands.

Part II. Mandatory Technical Criteria for Vegetated Wetlands Identification

Wetland hydrology is the driving force of wetlands. Vegetated wetlands occur in shallow water, on permanently saturated soils, or in areas subject to periodic inundation or saturation where anaerobic conditions usually develop due to excess water. Certain hydrologic conditions called "wetland hydrology" therefore drive the formation of wetlands and continue to maintain them. Permanent or periodic wetness is the fundamental factor that makes wetlands different from uplands (nonwetlands). Although wetland hydrology is the dominant force creating wetlands, long-term records for hydrology typically are not available for identifying the presence of wetlands or for delineating their upper boundaries. Consequently, other indicators sometimes must be used to determine whether an area meets the wetland criteria. It has been long recognized that various plants and their adaptations, certain plant communities, specific soil properties, and particular soil types (e.g., peats, mucks, and gleyed soils) can be used to help identify wetlands. In addition, there are a number of hydrologic indicators that can be used to help identify wetlands.

Existing wetland definitions recognize that wetlands are driven by wetland hydrology (permanent or periodic inundation and/or soil saturation) and that characteristic plants (hydrophytic vegetation) and soils (hydric soils) are identifiable components of vegetated wetlands. This manual uses these three components as criteria for vegetated wetland identification. Field staff should examine sites for indicators of hydrophytic vegetation, hydric soils, and wetland hydrology and document the presence or absence of indicators to the extent practicable. At sites where wetlands are obvious due to the overwhelming evidence provided by one indicator (e.g., permanent standing water), documentation of the other indicators, while necessary, need not be as intensive as in areas where wetlands are not so obvious. There are, however, many other cases where, as one moves toward the drier portion of the moisture gradient, rigorous examination and documentation of soil, vegetation, and hydrology characteristics is necessary. The fact that such wetlands are harder to identify has no bearing on their status as wetlands.

Under natural, undisturbed conditions, vegetated wetlands generally possess three characteristics: (1) Hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. These characteristics and their technical criteria for identification purposes are described in the following sections. The three technical criteria and their

verifying characteristics are mandatory, with the following exceptions: disturbed wetlands (i.e., wetlands that met the mandatory criteria prior to disturbance and have had the vegetation, soils, and/or hydrology altered such that the required evidence of the relevant indicators for the affected criterion has been removed); and specific wetland types that may never meet all three criteria although they are widely recognized as wetlands (i.e., some prairie potholes, playa lakes, vernal pools and pocosins, and other special wetlands that fail the hydrophytic vegetation criterion such as Eastern hemlock swamps, tamarack bogs, and white pine bogs). Descriptions of these exceptions are included in this manual.

This manual also includes other circumstances which may complicate wetland delineation and which therefore require special consideration (e.g., pit and mound topography, newly formed hydric soils).

The three mandatory technical criteria are presented below. Background information for each criterion is also provided.

Wetland Hydrology Criterion

An area has wetland hydrology when it is:

1. Inundated for 15 or more consecutive days, or saturated from surface water or from ground water to the surface for 21 or more consecutive days during the growing season in most years, or

2. Periodically flooded by tidal water in most years.

Areas meeting this criterion also are usually inundated or saturated for variable periods during the non-growing season. The term "inundated and/or saturated at the surface" means the soil is inundated or wet enough at the surface to the extent that water reaches the surface in an unlined borehole or can be squeezed or shaken from the soil at the surface. The growing season is the interval between 3 weeks before the average date of the last killing frost in the Spring to 3 weeks after the average date of the first killing frost in the Fall, with exceptions for areas experiencing freezing temperatures throughout the year (e.g., montane, tundra and boreal areas) that nevertheless support hydrophytic vegetation. The term "in most years" means that the condition represents the prevailing long-term hydrologic condition and would be expected to occur in the future in more years than not over the long term (e.g., more than 5 years out of 10).

While the above criterion must be met, many times field staff will not be present to do wetland determinations at the right time of year or for long enough to directly observe that an area is inundated for 15 or more consecutive days or saturated from surface water or from groundwater to the surface for 21 or more consecutive days during the growing season in most years.

An area meets the wetland hydrology criterion above by direct measurement of inundation and/or soil saturation of tidal flooding or as documented by one or more of the following indicators:

1. A minimum of 3 years of hydrologic records (e.g., groundwater well observations following the protocol on page 99, or tide or stream gauge records) collected during years of normal rainfall (amount and monthly distribution) and correlated with long-term hydrologic records for the specific geographical area that demonstrates the area meets the wetland hydrology criterion; or

2. Examination of aerial photography (preferably early spring or wet part of the growing season) for a minimum of 5 years reveals evidence of inundation and/or saturation in most years (e.g., 3 of 5 years or 6 of 10 years) and correlated with long-term hydrologic records for the specific geographical areas demonstrate that the area meets the wetland hydrology criterion; or

3. One or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, provide evidence sufficient to establish that an area is inundated for 15 or more consecutive days or saturated from surface water or from groundwater to the surface for 21 or more consecutive days during the growing season in most years, are materially present:

a. Surface water inundation; or

b. Observed free water at the surface in an unlined borehole; or

c. Water can be squeezed or shaken from a soil sample taken at the soil surface; or

d. Oxidized stains along the channels of living roots (Oxidized rhizospheres); or

e. Sulfidic material (distinct hydrogen sulfide, rotten egg odor) within 12 inches of the soil surface; or

f. Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves of floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

Note: Always consider the frequency and duration of these primary indicators and of the wetness that created them, and whether significant hydologic modification (e.g., Drainage) has effectively removed wetland hydrology from the site.

4. If none of the indicators in items 1, 2, or 3 above is present, one or more of the following secondary hydrologic indicators should be used in conjunction with corroborative information (e.g., maps) that supports a wetland hydology determination:

a. Silt marks (waterborne silt deposits) that indicate inundation; or

b. Drift lines; or

c. Surface-scoured areas; or

d. Other common plant morphological adaptations/responses to hydrology: shallow root systems and adventitious roots.

These secondary indicators may only be used in conjunction with other corroborative information that indicates wetland hydrology (e.g., regional indicators of saturation, hydrologic gauge data, county soil surveys, National Wetlands Inventory maps, aerial photographs, or reliable persons with local knowledge of inundation and/or saturated conditions). This information must be of sufficient quality and extent that when taken together with secondary indicators clearly supports the presence of wetland hydrology for the necessary time, duration, and frequency. This type of information may also can be used to support determinations based on the primary indicators listed above.

Note: Unless specifically addressed in this manual as disturbed areas, areas without any of the above hydrologic indicators are nonwetland. In areas of suspected significant hydrologic modification, follow the disturbed area procedures to determine if wetland hydrology still exists.

Wetland Hydrology Background

The driving force creating wetlands is "wetland hydrology," that is, permanent or periodic inundation, or soil saturation for a significant period (inundated for 15 or more consecutive days or saturated from surface water or from groundwater to the surface for 21 or more consecutive days) during the growing season in most years. Many wetlands are found along rivers, lakes, and estuaries where flooding is likely to occur, while other wetlands form in isolated depressions surrounded by upland where surface water collects. Still others develop on slopes of varying steepness, in surface water drainageways, or where ground water discharges to the land surface in spring or seepage areas. Thus, landscape position provides much insight into whether an area is likely to be subjected to wetland hydrology.

Permanent or periodic inundation, or soil saturation at the surface, at least seasonally, are the driving forces behind wetland formation. The presence of water in the soil due to inundation for 15 or more consecutive days or saturation from surface water or from groundwater to the surface for 21 or more consecutive days during the growing season in most years typically creates anaerobic conditions, which affect the types of plants that can grow and the types of soils that develop. These conditions hold true for most wetlands, especially those at the upper end of the soil moisture gradient. Anaerobiosis does not necessarily occur in all wetlands and those where it may not occur include vegetated sand bars, seepage areas, springs, and the upper edges of salt marshes. Wetlands have at least a seasonal or periodic abundance of water. For example, this water may come from direct precipitation, overbank flooding, surface water runoff due to precipitation or snow melt, ground water discharge, tidal flooding, irrigation, or other human-induced activities. The frequency and duration of inundation and soil saturation vary widely from permanent flooding or saturation to irregular flooding or saturation. Of the three technical criteria for wetland identification, wetland hydrology is often the least exact and most difficult to establish in the field, due largely to annual, seasonal, and daily fluctuations.

Numerous factors influence the wetness of an area, including precipitation, stratigraphy, topography, soil permeability, and plant cover. The frequency and duration of inundation or soil saturation are important in separating wetlands from nonwetlands. Areas of lower elevation in a floodplain or marsh usually have longer duration of inundation and saturation and often more frequent periods of these conditions than most areas at higher levels. Floodplain configuration may significantly affect the duration of inundation by facilitating rapid runoff or by causing poor drainage.

Soil permeability related to the texture of the soil also influences the duration of inundation or soil saturation. For example, clayey soils absorb water more slowly than sandy or loamy soils, and therefore have slower permeability and remain saturated much longer.

Type and amount of plant cover affect both the degree of inundation and the duration of saturated soil conditions. Excess water drains more slowly in areas of abundant plant cover, thereby increasing duration of inundation or soil saturation. On the other hand, transpiration rates are higher in areas of abundant plant cover, which may reduce the duration of soil saturation.

To determine whether the wetland hydrology criterion is met, one should consider recorded data, aerial photographs, and observed field conditions that provide direct or indirect evidence of inundation or soil saturation. Prolonged saturation often leaves evidence of such wetness in the soil (e.g., sulfur odor) and these properties are useful for verifying wetland hydrology provided the area's hydrology has not been significantly modified on-site or upstream in the watershed. If the hydrology has been significantly disturbed, particular care must be taken in assessing the wetland hydrology criterion; refer to disturbed area procedures to determine whether wetland hydrology still exists.

Measuring Wetland Hydrology

In certain instances, especially disturbed situations, it may be necessary to determine an area's hydrology by actively collecting on-site hydrologic data from direct measurements or observations. The duration and frequency of inundation by flooding may be established by evaluating long-term stream or tide gauge data or by examining aerial photos covering at least a 5-year period and comparing results with the wetland hydrology criterion. Saturation at the surface may be determined by making observations in an unlined borehole and establishing whether or not the soil is saturated to the surface for 21 or more consecutive days during the growing season in most years. A procedure for this is presented in the Disturbed Areas section of the manual. In general, if soil saturation is observed at the surface for 21 or more consecutive days during the growing season (or the area is inundated for 15 or more consecutive days), wetland hydrology probably exists. Interpretation of the above observations, however, must always be done with consideration of recent rainfall conditions (e.g., within the past few weeks) as well as the long-term rainfall patterns (e.g., abnormally wet or dry periods) preceding and during the time the hydrologic data were recorded.

Historical Recorded Hydrologic Data

Historical recorded hydrologic data usually provide both short- and long-term information on the frequency and duration of flooding, but little or no information on soil saturation periods. Historical recorded data include stream gauge data, lake gauge data, tide gauge data, flood predictions, and historical flood records. Use of these data is commonly limited to areas adjacent to streams and other similar areas. Recorded data may be available from the following sources: (1) CE district offices (data for major waterbodies and for site-specific areas from planning and design documents), (2) U.S. Geological Survey (stream and tidal gauge data), (3) National Oceanic and Atmospheric Administration (tidal gauge data), (4) State, county and local agencies (flood data), (5) SCS state offices (small watershed projects and water table study data), and (6) private developers or landowners (site-specific hydrologic data, which may include water table or groundwater well data).

Aerial Photographs

Aerial photographs may provide direct evidence of inundation or soil saturation at the surface in an area. Inundation (flooding or ponding) is best observed during the early spring in temperate and boreal regions when snow and ice are gone and leaves of deciduous trees and shrubs are not yet fully developed. This allows detection of wet soil conditions that would be obscured by the tree or shrub canopy at full leaf-out. For marshes, this season of photography is also desirable, except in regions characterized by distinct dry and rainy seasons, such as southern Florida and California. Wetland hydrology would be best observed during the wet season in these latter areas.

It is most desirable to examine several consecutive years of early spring or wet season aerial photographs to document evidence of wetland inundation or soil saturation. In this way, the effects of abnormally dry or wet springs, for example, may be minimized. In interpreting aerial photographs, it is important to know the antecedent weather conditions. This will help eliminate potential misinterpretations caused by abnormally wet or dry periods. Contact the U.S. Weather Service for historical weather records or the U.S. Geological Survey for hydrologic records. Aerial photographs for agricultural regions of the country are often available at county offices of the Agricultural Stabilization and Conservation Service.

Field Observations

Direct Evidence of Water

At certain times of the year in wetlands, and in certain types of wetlands at most times, wetland hydrology is quite evident, since surface water or saturated soils (e.g., soggy or wetter underfoot) may be observed. The

most obvious and revealing hydrologic indicator may be simply observing the areal extent of inundation. However, both seasonal conditions and recent weather conditions must be considered when observing an area because they can affect the presence of surface water on wetland and nonwetland sites. In many cases, soils saturated at the surface are obvious, since the ground surface is soggy or mucky under-foot.

To observe free water at the surface it may be necessary to dig a hole and observe the level at which water stands in the hole after sufficient time has been allowed for water to drain into the hole. In some cases, the upper level at which water is flowing into the hole can be observed by examining the walls of the hole. This level may represent the depth to the water table. In some heavy clay soils, however, water may not rapidly accumulate in the hole even when the soil is saturated. When attempting to observe the level of free water in a bore hole, adequate time should be allowed for water in the hole to reach equilibrium with the water table.

Soil saturation at the surface may be detected by a "squeeze test" or "shake test" which involve taking a surface soil sample and squeezing or shaking the sample. If water can be extracted, the soil is considered saturated at the surface.

When evaluating soil saturation, both the season of the year and the preceding weather conditions must be considered, since excess water may not be present during parts of the growing season in some wetlands due to high evaporation and plant transpiration rates which effectively lower the water table. At such times, other indicators of wetland hydrology may be present.

Other Signs of Wetland Hydrology

It is not necessary to observe inundation or saturation at the time of field inspection to identify wetland hydrology so long as indicators are sufficient to demonstrate to field personnel that the wetland hydrology criterion is met. Other signs of wetland hydrology may be observed, e.g., oxidized rhizospheres (root channels).

Some plants are able to survive saturated soil conditions (i.e., a reducing environment) because they can transport oxygen to their root zone. Iron oxide concretions (orangish or reddish brown in color) may form along the channels of living roots and rhizomes creating oxidized rhizospheres that provide evidence of soil saturation (anaerobic conditions) for a significant period during the growing season. Ephemeral or temporary oxidized rhizospheres may develop after abnormally heavy rainfall periods. Consequently, oxidized rhizospheres are most meaningful when observed with other wetland indicators especially in undrained soils displaying diagnostic hydric soil properties.

Other signs that may reflect wetland hydrology include water marks, drift lines, water-borne deposits, surface-scoured areas, wetland drainage patterns, and certain plant morphological adaptations.

(1) *Water marks* are found most commonly on woody vegetation or fixed objects (e.g., bridge pillars, buildings, and fences) but may also be observed on other vegetation. They often occur as dark stains on bark or other fixed objects.

(2) *Drift lines* are typically found adjacent to streams or others sources of water flow in wetlands and often occur in tidal marshes. Evidence consists of deposition of debris in a line on the wetland surface or debris entangled in aboveground vegetation or other fixed objects. Debris usually consists of remnants of vegetation (branches, stems, and leaves), litter, and other water-borne materials often deposited more or less parallel to the direction of water flow. Drift lines provide an indication of the minimum portion of the area inundated during a flooding event; the maximum level of inundation is generally at a higher elevation that indicated by a drift line. The drift lines in tidal wetlands are often referred to as "wrack lines."

(3) *Water-borne deposits of mineral or organic matter* may be observed on plants and other objects after inundation. This evidence may remain for a considerable period before it is removed by precipitation or subsequent inundation. Silt deposition in vegetation and other objects provides an indication of the minimum inundation level. When the deposits are primarily organic (e.g., fine organic material and algae), the detritus may become encrusted on or slightly above the soil surface after dewatering occurs. Sediment deposits (e.g., sandy material) along streams provide evidence of recent overbank flooding.

(4) *Surface scouring* occurs along floodplains where overbank flooding erodes sediments (e.g., at the bases of trees). The absence of leaf litter from the soil surface is also sometimes an indication of surface scouring. Forested wetlands that contain standing waters for relatively long duration will occasionally have areas of bare or essentially bare soil, sometimes associated with local depressions.

(5) Many plants growing in wetlands have developed *morphological features* in response to inundation or soil saturation. Examples include pneumatophores (e.g., cypress knees), prop roots, floating stems and leaves, hypertrophied lenticels (oversized stem pore), aerenchyma (air-filled) tissue in roots and stems, buttressed tree trunks, multiple trunks, adventitious roots, shallow root systems, polymorphic leaves, inflation leaves, stems or roots, Pneumatophores, prop roots, floating stems and leaves, hypertrophied lenticels, aerenchyma tissue, and buttressed tree trunks develop virtually only in wetland or aquatic environments and therefore are listed as primary hydrologic indicators in the wetland hydrology criterion. When these features are observed in young plants, they provide good evidence that wetland hydrology exists. Multiple trunks, adventitious roots, shallow root systems, polymorphic leaves, inflated leaves, stems or roots are commonly found in many wetland plants, yet not exclusive to them, and therefore are listed as secondary hydrologic indicators in the wetland hydrology criterion and indicate wetlands only when accompanied by other collateral information that indicates wetland hydrology.

Hydrophytic Vegetation Criterion

An area meets the hydrophytic vegetation criterion if, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index value of less than 3.0 (where OBL = 1.0, FACW = 2.0, FAC = 3.0, FACU = 4.0, and UPL = 5.0).

Note: Specific wetland types that may have vegetation that does not meet this criterion are listed as exceptions. Areas where the vegetation has been removed will generally meet the hydrophytic vegetation criteria if they are capable of supporting such vegetation. (See disturbed areas section)

Hydrophytic Vegetation Background

The term "hydrophytic vegetation" describes plants that live in conditions of excess wetness. For purposes of this manual, hydrophytes are defined as macrophytic plant life growing in water or on submerged substrates, or in soil or on a substrate that is at least periodically anaerobic (deficient in oxygen) as a result of excessive water content. All plants growing in wetlands have adapted in one way or another to life in permanently or periodically inundated or saturated soils. Some plants have developed structural or morphological adaptations to inundation or saturation, while others have broad ecological tolerances (Tiner, 1991). Some of these adaptive features are used as

indicators of wetland hydrology in this manual (see hydrology criterion), since they are a response to inundation and/or soil saturation. Probably all plants growing in wetlands possess physiological mechanisms to cope with periodic anaerobic soil conditions or life in water. Because they are not observable in the field, physiological and reproductive adaptations are not included in this manual.

Persons making wetland determinations should be able to identify at least the dominant wetland plants in each stratum (layer of vegetation) of a plant community. Plant identification requires the use of field guides or more technical taxonomic manuals. When necessary, seek help in identifying difficult species. Once a plant is identified to genus and species, consult the appropriate Federal list of plants that occur in wetlands to determine the "wetland indicator status" of the plant (see explanation below). This information will be used to help determine whether the hydrophytic vegetation criterion is met.

One should also become familiar with the technical literature on wetlands, especially for one's geographic region. Sources of available literature include: taxonomic plant manuals and field guides; scientific journals dealing with botany, ecology, and wetlands in particular; technical government reports on wetlands; proceedings of wetland workshops, conferences, and symposia; and the FWS's national wetland plant database, which contains habitat information on about 7,000 plant species. In addition, the FWS's National Wetlands Inventory (NWI) maps provide information on locations of hydrophytic plant communities that can be studied in the field to improve one's knowledge of such communities in particular regions.

If all wetland plant species grew only in wetlands, plants alone could be used to identify and delineate wetlands. However, of the nearly 7,000 vascular plant species which have been found growing in U.S. wetlands (Reed 1988), only about 27 percent are "obligate wetland" species that nearly always occur in wetlands under natural conditions. This means that the majority of plant species growing in wetlands also grow in nonwetlands to varying degrees. These plants may or may not be hydrophytes depending on where they are growing. This variability in habitat occurrence causes certain difficulties in identifying wetlands from a purely botanical standpoint in many cases. This is a major reason for evaluating soils and hydrology when identifying wetlands.

National List of Wetland Plant Species

The FWS in cooperation with CE, EPA, and SCS has published the "National List of Plant Species That Occur in Wetlands" from a review of the scientific literature and review by selected wetland experts and botanists (Reed 1988). The list separates vascular plants into four basic groups, commonly called "wetland indicator status," based on a plant species' frequency of occurrence in wetlands: (1) Obligate wetland plants (OBL) that occur almost always (estimated probability >99%) in nonwetlands under natural conditions; (2) facultative wetland plants (FACW) that usually occur in wetlands (estimated probability 67–99%), but occasionally are found in nonwetlands; (3) facultative plants (FAC) that are nearly equally likely to occur in wetlands or nonwetlands (estimated probability 34–66%); and (4) facultative upland plants (FACU) that usually occur in nonwetlands (estimated probability 67–99%), but occasionally are found in wetlands (estimated probability 1–33%). If a species occurs almost always (estimated probability >99%) in nonwetlands under natural conditions, it is considered an obligate upland plant (UPL). These latter plants do not usually appear on the wetland plant list; they are listed only in some regions of the country. If a species is not on the list, it is presumed to be an obligate upland plant, yet be advised that the list intentionally does not include nonvascular plant species (e.g., algae and mosses) or epiphytic plants. These omitted plants should not be considered in determining whether the hydrophytic vegetation criterion is met, unless one has particular knowledge of their frequency of occurrence in wetlands. Also be sure to check for synonyms in plant scientific names, since the nomenclature used in the list varies for some species from that used in regional taxonomic manuals or commonly used plant identification field guides.

The "National List of Plant Species That Occur in Wetlands" has been subdivided into regional and state lists. There is a formal procedure to petition the interagency plant review committee for making additions, deletions, and changes in indicator status. Since the lists are periodically updated, the U.S. Fish and Wildlife Service should be consulted to be sure that the most current version is being used for wetland determinations. The appropriate plant list for a specific geographic region should be used when making a wetland determination and evaluating whether the hydrophytic vegetation criterion is satisfied. (*Note:* The "National List of Plant Species That Occur in Wetlands" uses a plus (+) sign or a minus (−) sign to signify a higher or lower portion of a particular wetland indicator frequency for the three facultative-type indicators; for purposes of identifying hydrophytic vegetation according to this manual, however, FACW+, FACW−, FAC+, and FAC− are included as FACW and FAC, respectively, in the hydrophytic vegetation criterion.)

Procedures to be used to determine the presence of hydrophytic vegetation under the criterion are in the Appendices identified as the Point Intercept Sampling Proceedure.

Hydric Soil Criterion

An area has hydric soil when, based on field verification, it has either:

1. Soils listed by series in "Hydric Soils of the United States" (1987 and amendments), or

2. Organic soils (Histosols, except Folists), or

3. Mineral soils classifying as Sulfaquents, Hydraquents, or Histic subgroups of Aquic suborders, or

4. Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil.

An area meets the hydric soil criterion when, based on field verification, it has one or more of the following:

1. Where soil survey maps are available, the subject area is within:

a. A hydric soil map unit identified on the county list of hydric soil map units that is verified by landscape position and soil morphology against the series description of the hydric soil, or

b. A soil map unit with hydric soil inclusions identified on the county list of hydric soil map units, and the landscape position of the inclusion and the soil morphology for the identified soil series as a hydric soil inclusion are verified, or, if no series is designated, then either:

(1) The soil, classified to the series level, is on the national list of hydric soils, or

(2) The soil, classified according to "Soil Taxonomy", is a Histosol (except Folists), Sulfaquent, Hydraquent, or Histic Subgroup of Aquic Suborders, or

(3) Regional indicators of significant soil saturation (as developed and approved by Soil Conservation Service soil scientists and the Federal Interagency Committee for Wetlands Delineation) are materially present; or

2. Where soil maps are not available, and the landscape position is likely to contain hydric soil (e.g., floodplain,

depression, or seepage slope), subject area has either:

a. The soil, classified to the series level, is on the national list of hydric soils; or

b. The soil, classified according to "Soil Taxonomy", is a Histosol (except Folists), Sulfaquent, Hydraquent, or Histic Subgroup of Aquic Suborders; or

c. Regional indicators of significant soil saturation (as developed and approved by Soil Conservation Service soil scientists and the Federal Interagency Committee for Wetlands Delineation) are materially present.

Hydric Soil Background

Wetlands typically possess hydric soils, but not all areas mapped as hydric soil series are wetlands (e.g., dry phases that were never wetlands and drained phases that represent former wetlands). Hydric soils are defined as soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part (U.S.D.A. Soil Conservation Service 1987). These soils usually support hydrophytic vegetation under natural (unaltered) conditions.

National and State Hydric Soils Lists

The SCS in cooperation with the National Technical Committee for Hydric Soils (NTCHS) has prepared a list of the Nation's hydric soils (U.S.D.A. Soil Conservation Service 1987). State lists have also been prepared for statewide use. The national and state lists identify those soil series that typically meet the NTCHS hydric soil criteria according to available soil interpretation records in SCS's soils database. These lists are periodically updated, so make sure the list being used is the current one. The list, while extensive, does not include all series that may have hydric members; these soils may be determined as hydric when they have evidence of wetland hydrology and hydrophytic vegetation. The lists facilitate use of SCS county soil surveys for identifying potential wetlands. One must be careful, however, in using the soil survey, because a soil map unit of a nonhydric soil may have inclusions of hydric soil that were not delineated on the map or vice versa. Also, some map units (e.g., alluvial land, swamp, tidal marsh, muck and peat) may be hydric soil areas, but are not on the hydric soils lists because they were not given a series name at the time of mapping. These soils meet the NTCHS criteria for hydric soils.

County Hydric Soil Map Unit Lists

Because of the limitations of the national and state hydric soil lists, the SCS prepared lists of hydric soil map units for each county in the United States. These lists may be obtained from local SCS district offices and are the preferred lists to be used when using soil survey maps. The hydric soil map unit lists identify all map units that are either named by a hydric soil or that have a potential of having hydric soil inclusions. The lists provide the map unit symbol, the name of the hydric soil part or parts of the map unit, information on the hydric soil composition of the map unit, and probable landscape position of hydric soils in the map unit delineation. The county lists also include map units named by miscellaneous land types or higher levels in "Soil Taxonomy" that meet NTCHS hydric soil criteria.

Soil Surveys

The SCS publishes soil surveys for areas where soil mapping is completed. Soil surveys that meet standards of the National Cooperative Soil Survey (NCSS) are used to identify areas of hydric soils. These soil surveys may be published (completed) or unpublished (on file at local SCS field offices). Published soil surveys of an area may be obtained from the local SCS field office or the Agricultural Extension Service office. Unpublished maps may be obtained from the local SCS district office.

The NCSS maps contain four kinds of map units: (1) Consociations, (2) complexes, (3) associations, and (4) undifferentiated groups. (Note: Inclusions of unnamed soils may be contained within any map unit; the inclusions are listed in the description of the soil map unit in the soil survey report.) Consociations are soil map units named for a single kind of soil (taxon) or miscellaneous area. Seventy-five percent or more of the area is composed of the taxon for which the map unit is named (and similar taxa). When named by a hydric soil, the map unit is considered a hydric soil map unit for wetland determinations. However, small areas within these map units generally too small to be mapped separately (some areas are identified by "wet spot" symbols) may not be hydric and should be excluded in delineating wetlands.

Complexes and associations are soil map units named by two or more kinds of soils (taxa) or miscellaneous areas. If all taxa for which these map units are named are hydric, the soil map unit may be considered a hydric soil map unit for wetland determinations. If only part of the map unit is made up of hydric soils, only those portions of the map unit that are hydric are considered in wetland determinations.

Undifferentiated groups are soil map units named by two or more kinds of soils or miscellaneous areas. The soils in these map units do not always occur together in the same map unit but are included together because some common feature such as steepness or flooding determines use and management. These map units are distinguished from the others in that "and" is used as a conjunction in the name, while dashes are used for complexes and associations. If all components are hydric, the map unit may be considered a hydric soil map unit. If one or more of the soils for which the unit is named are nonhydric, each area must be examined for the presence of hydric soils.

Use of County Hydric Soils Map Unit Lists and Soil Surveys

The county hydric soils map unit list and soil surveys should be used to help determine if the hydric soil criterion is met in a given area. When making a wetland determination, one should first locate the area of concern on a soil survey map and identify the soil map units for the area. The county list of hydric soil map units should be consulted to determine whether the soil map units are hydric or potentially hydric. If hydric soil map units or map units with hydric soil inclusions are noted, then one should examine the soil in the field and compare its morphology with the corresponding hydric soil description in the soil survey report. If the soil's characteristics match those described for hydric soil, then the hydric soil criterion is met, unless the soil has been effectively drained. If soils have been significantly disturbed, either mechanically or hydrologically, refer to the disturbed areas section. In the absence of site-specific information, hydric soils also may be recognized by certain soil properties caused by wetland hydrology conditions that make soil meet the NTCHS criteria for hydric soils.

General Characteristics of Hydric Soils

Due to their wetness during the growing season, hydric soils usually develop certain morphological properties that can be readily observed in the field. Anaerobic soil conditions usually occur due to excessive wetness and they typically lower the soil redox potential causing a chemical reduction of some soil components, mainly iron oxides and manganese oxides. This reduction affects solubility, movement, and aggregation of these oxides which is reflected in the soil color and other

physical characteristics that are usually indicative of hydric soils.

Soils are separated into two major types on the basis of material composition: organic soil and mineral soil. In general, soils with at least 16 inches of organic material in the upper part of the soil profile and soils with organic material resting on bedrock are considered organic soils (Histosols). Soils largely composed of sand, silt, and/or clay are mineral soils. For technical definitions, see "Soil Taxonomy", U.S.D.A. Soil Survey Staff 1975.

Organic Soils

Accumulation of organic matter in most organic soils results from anaerobic soil conditions associated with long periods of submergence or soil saturation during the growing season. These saturated conditions impede aerobic decomposition (oxidation) of the bulk organic materials such as leaves, stems, and roots, and encourage their accumulation over time as peat or muck. Consequently, most organic soils are characterized as very poorly drained soils. Organic soils typically form in waterlogged depressions, and peat or muck deposits may range from about 1.5 feet to more than 30 feet deep. Organic soils also develop in low-lying areas along coastal waters where tidal flooding is frequent.

Hydric organic soils are subdivided into three groups based on the presence of identifiable plant material: (1) Muck (Saprists) in which two-thirds or more of the material is decomposed and less than one-third of the plant fibers are identifiable; (2) peat (Fibrists) in which less than one-third of the material is decomposed and more than two-thirds of the plant fibers are still identifiable; and (3) mucky peat or peaty muck (Hemists) in which the ratio of decomposed to identifiable plant matter is more nearly even (U.S.D.A. Soil Survey Staff 1975). A fourth group of organic soils (Folists) exists in tropical and boreal mountainous areas where precipitation exceeds the evapotranspiration rate, but these soils are never saturated for more than a few days after heavy rains and thus do not develop under hydric conditions. All organic soils, with the exception of the Folists, are hydric soils.

Hydric organic soils can be easily recognized as black-colored muck to dark brown-colored peat. Distinguishing mucks from peats based on the relative degree of decomposition is fairly simple. In mucks (Saprists), almost all of the plant remains have been decomposed beyond recognition. When rubbed, mucks feel greasy and leave hands dirty. In contrast, the plant remains in peats (Fibrists) show little decomposition and the original constituent plants can be recognized fairly easily. When the organic matter is rubbed between the fingers, most plants fibers will remain identifiable, leaving hands relatively clean. Between the extremes of mucks and peats, organic soils with partially decomposed plant fibers (Hemists) can be recognized. In peaty mucks up to two-thirds of the plant fibers can be destroyed by rubbing the materials between the fingers, while in mucky peats up to two-thirds of the plant remains are still recognizable after rubbing.

Hydric Mineral Soils

When less organic material accumulates in soil, the soil is classified as minerd soil. Some mineral soils may have thick organic surface layers (histic epipedons) due to heavy seasonal rainfall or a high water table, yet these soils are still composed largely of mineral matter (Ponnamperuma 1972). Mineral soils that are covered with moving (flooded) or standing (ponded) water for significant periods or are saturated for extended periods during the growing season meet the NTCHS criteria for hydric soils and are classified as hydric mineral soils. Soil saturation may result from low-lying topographic position, groundwater seepage, or the presence of a slowly permeable layer (e.g., clay, confining layer, confining bedrock, or hardpan).

The duration and depth of soil saturation are essential criteria for identifying hydric soils and wetlands. Soil morphological features are commonly used to indicate long-term soil moisture regimes (Bouma 1983).

A thick dark surface layer, grayish subsurface and subsoil colors, the presence of orange or reddish brown (iron) and/or dark reddish brown or black (manganese) mottles or concretions near the surface, and the wet condition of the soil may help identify the hydric character of many mineral soils. The grayish subsurface and subsoil colors and thick, dark surface layers are the best indicators of current wetness, since the yellow- or orange-colored mottles are very insoluble and once formed may remain indefinitely as relict mottles of former wetness (Diers and Anderson 1984).

A histic epipedon (organic surface layer) is evidence of a soil meeting the NTCHS criteria. It is an 8 to 16 inch organic layer at or near the surface of a hydric mineral soil that is saturated with water for 30 consecutive days or more in most years. It contains a minimum of 20 percent organic matter when no clay is present or a minimum of 30 percent organic matter when clay content is 60 percent or greater. Soils with histic epipedons are inundated or saturated for sufficient periods to greatly retard aerobic decomposition of organic matter, and are considered hydric soils. In general, a histic epipedon is a thin surface layer of peat or muck if the soil has not been plowed (U.S.D.A. Soil Survey Staff 1975). Histic epipedons are typically designated as O-horizons (Oa, Oe, or Oi surface layers), and in some cases the terms "mucky" or "peaty" are used as modifiers to the mineral soil texture term, e.g., mucky loam.

Soil-related Evidence of Significant Saturation

Identification of some wetlands and delineation of the upper boundary in many wetlands is not readily accomplished without a detailed examination of the underlying soil. Colors in the soil are strongly influenced by the frequency and duration of soil saturation which causes reducing conditions. A gleyed layer and a low chroma matrix with high chroma mottles, near the surface are common indicators of hydric soils throughout the county. Other soil markers of significant soil saturation vary regionally. These signs include thick organic surface layers ($\geq$ 8 inches), gleying, and certain types of mottling. If significant drainage or groundwater alteration has taken place, then it is necessary to determine whether the area in question is effectively drained and is now nonwetland or is only partly drained and remains wetland despite some hydrologic modification. Guidance for determining whether an area is effectively drained is presented in the section on disturbed areas.

Soils saturated for prolonged periods during the growing season in most years are usually gleyed in the saturated zone. Gleyed layers are predominantly gray in color and occasionally greenish or bluish gray. In gleyed soils, the distinctive colors result from a process known as gleization. Prolonged saturation of mineral soil converts iron from its oxidized (ferric) form to its reduced (ferrous) state. These reduced compounds may be completely removed from the soil, resulting in gleying (Veneman, *et al.* 1976). Mineral soils that are always saturated are typically uniformly gleyed throughout the saturated area. Soils gleyed to the surface layer are evidence of wetland hydrology and anaerobic soil conditions. These soils often show evidence of oxidizing conditions only along root channels. Some nonsaturated soils have

gray layers (E-horizons) immediately below the surface layer that are gray for reasons other than saturation, such as leaching due to organic acids (see Spodosols below).

Mineral soils that are alternately saturated and oxidized (aerated) during the year are usually mottled in the part of the soil that is seasonally wet. Mottles are spots or blotches of different colors or shades of colors interspersed with the dominant (matrix) color. The abundance, size, and color of the mottles usually reflect the hydrology—the duration of the saturation period, and indicate whether or not the soil is saturated for long periods. Mineral soils that are predominantly grayish with common or many, distinct or prominent brown or yellow mottles are usually saturated for long periods during the growing season and are hydric soils. Soils that are predominantly brown or yellow with gray mottles are saturated for shorter periods and may be hydric depending on the depth to the gray mottles and the color of the overlying layer. Mineral soils that are never saturated are usually bright-colored and are not mottled; they are nonhydric soils (Tiner and Veneman 1987). Realize, however, that in some hydric soils, mottles may not be visible due to masking by organic matter (Parker, *et al.* 1984).

It is important to note that the gleization and mottle formation processes are strongly influenced by the activity of certain soil microorganisms. These microorganisms reduce iron when the soil environment is anaerobic, that is, when virtually no free oxygen is present, and when the soil contains organic matter. If the soil conditions are such that free oxygen is present, organic matter is absent, or temperatures are too low (below 41 degrees Fahrenheit) to sustain microbial activity, gleization will not proceed and mottles will not form, even though the soil may be saturated for prolonged periods of time (Diers and Anderson 1984). Soil colors as discussed above often reveal much about a soil's historical wetness over the long term. Scientists and others examining the soil can determine the approximate soil color by comparing the soil sample with a Munsell soil color chart. The standardized Munsell soil colors are identified by three components: Hue, value, and chroma. The hue is related to one of the main spectral colors: red, yellow, green, blue, or purple, or various mixtures of these principal colors. The value refers to the degree of lightness, while the chroma notation indicates the color strength or purity. In the Munsell soil color book, each individual hue has its own page, each of which is further subdivided into units for value (on the vertical axis) and chroma (horizontal axis). Although theoretically each soil color represents a unique combination of hues, values, and chromas, the number of combinations common in the soil environment usually is limited. Because of this situation and the fact that accurate reproduction of each soil color is expensive, the Munsell soil color book contains a limited number of combinations of hues, values, and chromas. The color of the soil matrix or a mottle is determined by comparing a soil sample with the individual color chips in the soil color book. The appropriate Munsell color name can be read from the facing page in the "Munsell Soil Color Charts" (Kollmorgen Corporation 1975). Chromas of 2 or less are considered low chromas and are often diagnostic of hydric soils. Low chroma colors include black, various shades of gray, and the darker shades of brown and red.

Gleying (bluish, greenish, or grayish colors) in or immediately below the A-horizon is an indication of a markedly reduced hydric soil and an area that should meet wetland hydrology in the absence of significant hydrologic modification. Gleying can occur in both mottled and unmottled soils. Gleyed soil conditions can be determined by using the gley page of the "Munsell Soil Color Charts" (Kollmorgen Corporation 1975). Note: gleyed conditions normally extend throughout saturated soils. Beware of soils with gray subsoils due to parent materials, soils with gray e-horizons or albic horizons due to leaching and not to saturation; these latter soils can often be recognized by bright-colored layers below the e-horizon. (See "Atypical Hydric Soils" below.)

Mineral soils that are saturated for substantial periods of the growing season, but are unsaturated for some time, commonly develop mottles. Soils that have brightly colored mottles and a low chroma matrix are indicative of a fluctuating water table.

The following color features in the horizon immediately below the A-horizon (or E-horizon, albic horizon) provide evidence of soil saturation sufficient to be hydric soils and should also meet the wetland hydrology criterion:

(1) Matrix chroma of 2 or less in mottled soils, or

(2) Matrix chroma of 1 or less in unmottled soils.

Note: Mollisols have value requirements of 4 or more as well as chroma requirements for aquic suborders. (See "Atypical Hydric Soils" below.)

The chroma requirements above are for soils in a moistened condition. Colors noted for dry (unmoistened) soils should be clearly stated as such. The colors of the topsoil (A-horizon) are often not indicative of the hydrologic situation because cultivation and soil enrichment affect the original soil color. Hence, the soil colors below the A-horizon (and E-horizon, if present) usually must be examined.

Note: Beware of hydric soils that have colors other than those described above. (See "Atypical Hydric Soils" below.)

During the oxidation-reduction process, the iron and manganese in solution in saturated soils are sometimes precipitated as oxides into concretions or soft masses upon exposure to air as the soil dries. Concretions are local concretions of chemical compounds (e.g., iron oxide) in the form of a grain or nodule of varying size, shape, hardness, and color (Buckman and Brady 1969). Manganese concretions are also usually black or dark brown, while iron concentrations are usually yellow, orange or reddish brown. In wetlands, these concretions are also usually accompanied by soil colors as described above.

Atypical Hydric Soils

Some hydric soils are soils lacking diagnostic hydric soil properties or soils that may look like hydric soils in terms of soil color, but whose color is not the result of excess wetness.

Presumably, the area in question has been located on a soil survey map that identified it as a hydric component of a map unit on the county list of hydric soil map units or if no maps are available, soil properties (matrix colors) that appear to contradict landscape position (e.g., red-colored soils in obvious depressions or gray-colored soils in obvious uplands) have been observed. Atypical Hydric soils are discussed below.

To determine whether the area in question is wetland, emphasis will be placed on vegetation and signs of hydrology, yet always consider landscape position in assessing the likelihood of wetland in these situations.

Hydric Entisols (Floodplain and Sandy Soils)

Entisols are usually young or recently formed soils that have little or no evidence of pedogenically developed horizons (U.S.D.A. Soil Survey Staff 1975). These soils are typical of floodplains throughout the U.S., but are also found in glacial outwash plains, along tidal waters, and in other areas.

They include sandy soils of riverine islands, bars, and banks and finer-textured soils of floodplain terraces. Wet entisols have an aquic or peraquic moisture regime and are considered hydric soils, unless effectively drained. Some Entisols are easily recognized as hydric soils such as the Sulfaquents of tidal salt marshes and Hydraquents, whereas others pose problems because they do not possess typical hydric soil field indicators. Wet sandy Entisols (with loamy fine sand and coarser textures in horizons within 20 inches of the surface) may lack sufficient organic matter and clay to develop hydric soil colors. When these soils have a hue between 10YR and 10Y and distinct or prominent mottles present, a chroma of 3 or less is permitted to identify the soil as hydric (i.e., an aquic moisture regime). Also, hydrologic data showing that the soil is flooded or ponded enough to be wetland are sufficient to verify these soils as hydric. Sandy Entisols must have positive indicators of hydrology (see positive indicators for sandy soils for your region) in the upper 6 inches and have colors of the loamy fine sand or coarser Aquents. Soils that key to the aeric suborder or have colors of the aeric suborder within 12 inches are not considered hydric soils. Other Entisols are considered hydric if they classify in the aquic suborder and have the colors as listed for soils that are finer than loamy fine sand in some or all layers to a depth of 12 inches. Soils that key to the aeric subgroup or have aeric colors above 12 inches as listed for Aquent subgroups are not hydric.

Hydric Mollisols (Prairie and Steppe Soils)

Mollisols are dark colored, base-rich soils. They are common in the central part of the conterminous U.S. from eastern Illinois to Montana and south to Texas. Natural vegetation is mainly tall and mid grass prairies and short grass steppes. These soils typically have deep, dark-colored surface (mollic epipedons) and subsurface layers that have color values of less than 4 moist and commonly have chromas of 2 or less. The low chroma colors of Mollisols are not necessary due to wetness of periods of saturation. They are rich in organic matter due largely to the vegetation (deep roots) and reworking of the soil and organic matter by earthworms, ants, moles, and rodents. The low chroma colors of Mollisols are not necessarily due to prolonged saturation, so be particularly careful in making wetland determinations in these soils. Many Great Groups of aquic Mollisols do not have aeric subgroups. Therefore, if a Mollisol is classified as an Aquoll, special care is needed to determine if it is hydric. There are two suborders of Mollisols that have aquic moisture regimes: Albolls and Aquolls. Albolls have an albic horizon that separates the surface layer from an argillic or natric horizon. The albic horizon must have chromas of 2 or less or the albic, argillic, or natric horizons must have characteristics associated with wetness such as mottles, iron-manganese concretions larger than 2 mm or both. All Albolls are considered hydric soils. Aquolls exhibiting regional hydrology characteristics for Mollisols in the upper part are considered hydric.

Hydric Oxisols

These soils are highly weathered, reddish, yellowish, or grayish soils of tropical and subtropical regions. They are mixtures of quartz, kaolin, free oxides, and organic matter. For the most part, they are nearly featureless soils without clearly distinguishable horizons. Oxisols normally occur on stable surfaces and weathering has proceeded to great depths. To be hydric, these normally red-colored soils are required to have chromas 2 or less immediately below the surface layer, or if there are distinct or prominent mottles, the chroma is 3 or less. They also qualify as hydric if they have continuous plinthite within 12 inches of the surface.

Hydric Spodosols (Evergreen Forest Soils)

These soils, usually associated with coniferous forests, are common in northern temperate and boreal regions of the U.S. and along the Gulf-Atlantic Coastal Plain. Spodosols have a gray eluvial E-horizon overlying a diagnostic spodic horizon of accumulated (sometimes weakly cemented) organic matter, aluminum, and iron (U.S.D.A. Soil Survey Staff 1975). A process called podzolization is responsible for creating these two soil layers. Organic acids from the leaf litter on the soil surface are moved downward through the soil with rainfall, cleaning the sand grains in the first horizon (the E-horizon) then coating the sand grains with organic matter and iron oxides in the second layer (the spodic horizon). Certain vegetation produce organic acids that speed podzolization including eastern hemlock (Tsuga canadensis), spruces (Picea spp.), pine (Pinus spp.), larches (Larix spp.), and oaks (Quercus spp.) (Buol, et al. 1980). The E-horizon or Albic horizon by definition has a chroma of 3 or less and is often mistaken for a gleyed layer by the novice. These Spodosols must have one of the positive regional hydrology indicators and meet the color requirement for Aquods listed in "Soil Taxonomy." Hydric Spodosols that have a thick (more than 12 inches) sandy epipedon are extremely harder to identify especially in the Gulf-Atlantic Coastal Plain. These soils must also meet the color requirements for the Aquod suborder and meet one of the regional hydrology indicators for sandy soils.

Hydric Vertisols (Shrink and Swell Soils)

These soils are dark-colored clayey soils that are extensive in the Great Plains, in the southern U.S., and in parts of California. They develop wide, deep cracks when dry and swell shut, when wet. Many Vertisols exhibit gilgai microtopography with swells and swales or mounds and hollows. The morphology of these soils may be distinctly different on the mound and in the hollow. They commonly have thick dark-colored surface layers because of the churning action created by the shrinking and swelling clays. During wet periods, they are very slowly permeable and may pond water on the surface of the micro-hollows, but in dry periods they are rapidly permeable with water travelling along the deep cracks to lower layers. These soils must meet one of the regional hydrology indicators for Vertisols to qualify as hydric.

Hydric Soils Derived From Red Parent Material

Hydric mineral soils derived from red parent materials (e.g., weathered clays, Triassic sandstones, and Triassic shales) may lack the low chroma colors characteristic of most hydric mineral soils. In these soils, the hue is redder than 10YR because of parent materials that remain red after citrate-dithionite extraction, so the low chroma requirement for hydric soil is waived (U.S.D.A. Soil Conservation Service 1982). Red soils are most common along the Gulf-Atlantic Coastal Plain (Ultisols), but are also found in the Midwest and parts of the Southwest and West (Alfisols), in the tropics, and in glacial areas where older landscapes of red shales and sandstones have been exposed. In southern New England, red parent material hydric soils are derived from reddish sandstone, shale, conglomerate, or basalt. These soils include the following series: Meno (Aeric Haplaquepts), Wilbraham (Aquic Dystrochrepts), Lim (Aeric Fluvaquents), and Bash (Fluvaquentic Dystrochrepts). In the absence of diagnostic hydric soil properties, more weight must be placed on the vegetation and hydrology.

Hydric Soils Derived From Low Chroma Parent Materials

Soils derived from slate and phyllite produce low chroma colors due to this parent material. In southern New England, nonhydric soils having predominantly low chroma colors include the following series: Newport, Nassau, Dutchess, Bernardston, Pittstown, Dummerston, Taconic, Macomber, Lakesboro, and Fullan. A few series derived from these materials are hydric, including Stissing, Brayton, and Mansfield, with the first two including nonhydric members as well. Due to the difficulty of using soil colors as indicators of wetness, more weight must be placed on vegetation and hydrology.

Wetlands That Are Exceptions to the Three Criteria

There are areas that meet the definition of wetlands but are exceptions to the three mandatory wetland criteria. These exceptions include widely recognized wetlands that fail to meet the wetland hydrology criterion (i.e., playa lakes, vernal pools, prairie potholes and pocosins which are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season) and the three specific wetland types that fail to meet the hydrophytic vegetation criterion (i.e., wetlands that meet the wetland hydrology and hydric soils criteria but are dominated by facultative upland plants, i.e., Eastern hemlock swamps, white pine bogs, and tamarack swamps). Such areas are wetlands only if they meet one of the descriptions of exceptions to the three criteria provided below. Additional information on some of these exceptions is provided in appendix 5. Other circumstances that warrant special consideration are addressed in this manual in the "Atypical Hydric Soils" discussion, and the "Problem Area Wetlands" section.

Pocosins

The pocosin wetlands of the Southeast contain broadleaved evergreen shrub bogs. Such bogs typically occur in areas characterized by highly organic soils and long hydroperiods during which inundation may but does not always occur. The largest areas of pocosin wetlands occur in the outer Coastal Plain of North Carolina. Although early settlers used the term to depict a variety of swamp vegetation types; pocosin wetlands usually are described as marshy or boggy shrub areas or flatwoods with poor drainage where peaty soils typically support scattered pines and a dense growth of shrubs, mostly evergreen (Sharitz and Gibbons 1982). Hydrology of pocosins may not be readily apparent due to the thick underlying peaty soils that may dry out rapidly after the early part of the growing season due to evapotranspiration. This, in addition to the strong colloidal bonding between water and organic matter in the soil may make it difficult to squeeze or shake water from the surface soil. Thus, other indicators should be used to identify wetland hydrology in pocosins. Located on the Coastal Plain, pocosins perform important aquatic functions such as storing rainwater and regulating its discharge into nearby estuaries where aquatic life is affected by fluctuations in streamflow and salinity. Pocosins also function to stabilize nutrients, reducing the potential for nutrient overloading in nearby estuaries.

Playas

Playas occur in many arid and semiarid regions of the world. Although occurring throughout much of the western United States, they are concentrated in the southern Great Plains as either ephemeral or permanent lakes or wetlands. The topography of most playa regions is flat to gently rolling and generally devoid of drainage. Playa basins collect water primarily in two peak periods—May and September—as a result of regional convectional storms. Wetland hydrology is best characterized by examining hydrological indicators over a multi-year period. Playa basins may have a dense cover of annual or perennial vegetation or may be barren, depending on the timing and other factors such as precipitation and irrigational runoff. As with potholes, the process of annual drying in playas enables the invasion of FAC, FACU, and UPL plants during dry periods which may persist into other seasons. Playas typically are important waterfowl habitat. Additional information to assist in playa wetland identification is in appendix 5.

Prairie Potholes

Prairie potholes are glacially-formed depressional wetlands located in the north central United States and southern Canada. Many prairie potholes are seasonally dry but fill with snowmelt and rain early in the growing season. This is because average precipitation is far too sparse to meet the demands of evaporation and as a result, some potholes are dry for a significant portion of the year. The process of annual drying in potholes enables the invasion of FAC, FACU, or UPL plant species during dry periods which may persist into wet seasons. Nevertheless, a variety of vegetation characteristic of a freshwater marsh can exist in a prairie pothole with submergent and floating plants in deeper water, bulrushes and cattails closer to shore, and sedges located toward the upland. The drastically fluctuating climate and alteration for farming have resulted in highly disturbed conditions that make wetland identification difficult. Potholes are typically known for supporting an abundance of resident and migratory waterfowl. Additional information to assist in prairie potholes wetland identification is in appendix 5.

Vernal Pools

Vernal pools are natural wetlands are depressional wetlands that are covered by shallow water for variable periods from winter to spring, but may be completely dry at the surface for most of the summer and fall. They hold water long enough to allow some aquatic organisms (e.g., salamanders and frogs) to grow and reproduce (complete their life cycles), but not long enough to permit the development of a typical pond or marsh ecosystem. Since vernal pools vary considerably in depth and duration of both from year to year, within a year, or between different pools, plant composition is quite dynamic. Depending on the seasonal phase of the pool, plants can range from OBL aquatic plants to FAC and FACU species. Additional information to assist in vernal pool wetland identification is in appendix 5.

List of Special Wetlands That Fail the Hydrophytic Vegetation Criterion

Some wetlands demonstrate a prevalence of wetland plant species that are more typically found in uplands. This usually occurs as a result of the adaptability of the species to saturated soil conditions. Wetland-adapted populations or ecotypes of species that more frequently occur in uplands occur in a wide variety of species (Tiner 1991). —Recognizable wetland types in which this phenomenon occurs are listed below. These areas must meet the wetland hydrology and hydric soils criteria.

White Pine Bogs of the Northeast and Northern Midwest

Eastern Hemlock Swamps and Bogs in the Northeast

Tamarack Bogs

Part III. Standard Methods for Identification and Delineation of Wetlands

Four basic approaches for identifying and delineating wetlands have been

developed to cover situations ranging from desk-top or office determinations to highly complex field determinations for regulatory purposes. These methods are the recommended approaches that have been successfully used to delineate wetlands by the four Federal agencies. If situations require different approaches, the reasons for departing from recommended approaches should be documented. Remember, however, that any method for making a wetland determination must consider the three technical criteria (i.e., hydrophytic vegetation, hydric soils, and wetland hydrology) listed in Part II of this manual. These criteria must be met in order to identify a wetland (unless the area is addressed in this manual as an exception to the criteria). Moreover, procedures for determining the wetland boundary must be consistent with those used in this manual. In applying all methods, relevant available information on wetlands in the area of concern should be collected and reviewed. Table 1 lists primary data sources.

Selection of a Method

The wetland delineation methods presented in this manual can be grouped into two general types: (1) Offsite preliminary procedures and (2) onsite procedures. The offsite procedures are designed for use in the office for preliminary wetland determinations, while onsite procedures are developed for use in the field for definitive wetland determinations. When an onsite inspection is unnecessary or cannot be undertaken for various reasons, available information can be reviewed in the office to make a preliminary wetland determination. If available information is insufficient to make a preliminary wetland determination or if a definitive wetland determination or wetland boundary must be established, (e.g., for determining whether or not there is jurisdiction or the boundaries of jurisdiction under a Federal wetland regulatory program), an onsite inspection should be conducted. For determining whether or not an area is subject to Clean Water Act jurisdiction, an onsite inspection is usually necessary. Depending on the field information needed or the complexity of the area, one of three basic onsite methods may be employed: (1) Routine, (2) intermediate-level, or (3) comprehensive.

The routine method is designed for areas equal to or less than five acres in size or larger areas with homogeneous vegetation. For areas greater than five acres in size or other areas of any size that are highly diverse in vegetation, the intermediate-level method or the comprehensive method should be applied, as necessary. The comprehensive method is applied to situations requiring detailed documentation of vegetation, soils, and hydrology. Assessments of significantly disturbed sites will often require intermediate-level or comprehensive determinations as well as some special procedures. Wetland delineators should become well acquainted with common types of wetland disturbances, and with types of wetlands that are described in this manual as exceptions to the three criteria. In making wetland determinations, one should select the appropriate method for each individual unit within the area of concern and not necessarily employ one method for the entire site. Thus, a combination of determination methods may be used for a given site.

Regardless of the method used, the desired outcome or final product is a wetland/nonwetland determination. Depending on one's expertise, available information, and individual or agency preference, there are two basic approaches to delineating wetland boundaries. The first approach involves characterizing plant communities in the area, identifying plant communities meeting the hydrophytic vegetation criterion, examining the soils in these areas to confirm that the hydric soil criterion is met, and finally looking for evidence of wetland hydrology to verify this criterion. This approach has been widely used by the CE and EPA and to a large extent by the FWS. A second approach involves first delineating the approximate boundary of potential hydric soils, and then verifying the presence of likely hydrophytic vegetation and looking for signs of wetland hydrology. This type of approach has been employed by the SCS and to a limited extent by the FWS. Since these approaches yield the same result, this manual incorporates both approaches into most of the methods presented.

TABLE 1.—PRIMARY SOURCES OF INFORMATION THAT MAY BE HELPFUL IN MAKING A WETLAND DETERMINATION

Data name	Source
Topographic Maps	U.S. Geological Survey (Call 1-800-USA-MAPS).
National Wetlands Inventory Maps.	U.S. Fish and Wildlife Service (Call 1-800-USA-MAPS).
County Soil Survey Reports.	U.S.D.A. Soil Conservation Service.
National Hydric Soils List	SCSNational Office.
State Hydric Soils List	SCS State Offices.
County Hydric Soil Map Unit List.	SCS District Offices.
National Flood Insurance Maps.	Federal Emergency Management Agency.
Local Wetland Maps	State and local agencies.
Land Use and Land Cover Maps.	USGS (1-800-USA-MAPS).
Aerial Photographs	Various sources.
Agricultural Stabilization and Conservation Service Compliance Slides.	USDA/ASCS.
Satellite Imagery	EOSAT Corporation, SPOT Corporation, and others.
National List of Plant Species That Occur in Wetlands (Stock No. 024-010-00682-0).	Govt. Printing Office, Superintendent of Docs., Washington, DC 20402.
Regional Lists of Plants that Occur in Wetlands.	Natl. Technical Service, 5285 Port Royal Head, Springfield, VA 22161 (703) 487-4650.
National Wetland Plant Database.	FWS.
Stream Gauge Data	CE District Offices and USGS.
Soil Drainage Guides	SCS District Offices.
Environmental Impact Statements, Assessments.	Various Federal and State agencies.
Published Reports	Federal and State agencies, universities, and others.
Local Expertise	Universities, consultants, and others.
Site-specific Plans and Engineering Designs.	Private developers.

Description of Methods

Offsite Preliminary Determinations

When an onsite inspection is not necessary because information on hydrology, hydric soils, and hydrophytic vegetation is known or an inspection is not possible due to time constraints or other reasons, a preliminary wetland determination can be made in the office. This approach provides an approximation of the presence of wetland and its boundaries based on available information. The accuracy of the determination depends on the quality of the information used and on one's ability and experience in an area to interpret these data. Where reliable, site-specific data have been previously collected, the wetland determination can be reasonably accurate. Where these data do not exist, more generalized information may be used to make a preliminary wetland determination. In either case, however, if a more accurate delineation is required, then onsite procedures must be employed. For the purposes of

determining whether an area is subject to federal jurisdiction under the Clean Water Act or other Federal wetland regulatory program, onsite determinations are usually necessary. Regardless of the method used, documentation of all three criteria is mandatory.

Onsite Determinations

When an onsite inspection is necessary, always be sure to review pertinent background information (e.g., NWI maps, soil surveys, and site plans) before going to the subject site. This information will be helpful in determining what type of field method should be employed. Also, read the sections of this manual that discuss disturbed area, and exceptions to the three criteria before conducting field work. These situations can pose problems for the inexperienced wetland delineator, so learn the procedures for evaluating these sites. Recommended equipment and materials for conducting onsite determinations are listed in Table 2.

TABLE 2.—RECOMMENDED EQUIPMENT AND MATERIALS FOR ONSITE DETERMINATIONS

Equipment	Materials
Soil auger, probe, or spade.	Data sheets and clipboard.
Sighting compass	Field notebook.
Pen or pencil	Base (topographic) map.
Penknife	Aerial photograph.
Hand lens	National Wetlands Inventory map.
Vegetation sampling frame*.	Soil survey or other soil map.
Camera/Film	Appropriate Federal interagency.
Binoculars	Wetland plants list.
Tape measure	County hydric soil map unit list.
Prism or angle gauge	Munsell soil color book.
Diameter tape*	Plant identification field guides/manuals.
Vasculum (for plant collect.).	National List of Scientific Plant Names.
Calculator*	Flagging tape/wire flags-wooden stakes.
Dissecting kit	Plastic bag (for collecting plants and soil samples as needed).

*Needed for comprehensive determination.

For every upcoming field inspection, the following pre-inspection steps should be undertaken:

Step 1. Locate the project area on a map (e.g., U.S. Geological Survey topographic map or SCS soil survey map) or on an aerial photograph and determine the limits of the area of concern. Proceed to Step 2.

Step 2. Estimate the size of the subject area. Proceed to Step 3.

Step 3. Review existing background information and determine, to the extent possible, the site's geomorphological setting (e.g., floodplain, isolated depression, or ridge and swale complex), its habitat or vegetative complexity (i.e., the range or habitat or vegetation types), and its soils. (Note: Depending on available information, it may not be possible to determine the habitat complexity without going on the site; if necessary, do a field reconnaissance.) Proceed to Step 4.

Step 4. Determine whether a disturbed condition exists. Examine available information and determine whether there is evidence of sufficient natural or human-induced alteration to significantly modify all or a portion of the area's vegetation, soils, and/or hydrology. If such disturbance is noted, identify the limits of affected areas for they should be evaluated separately for wetland determination purposes (usually after evaluating undisturbed areas). The presence of disturbed areas within the subject area should be considered when selecting an onsite determination method.

(Note: It may be possible that at any time during this determination, one or more of the three characteristics may be found to be significantly altered. If this happens, follow the disturbed area wetland determination procedures, as necessary). Proceed to Step 5.

Step 5. Determine the field determination method to be used. Considering the size and complexity of the area and the need for quantification, determine whether a routine, intermediate-level, or comprehensive field determination method should be used. When the area is equal to or less than five acres in size or is larger and appears to be relatively homogeneous with respect to vegetation, soils, and/or hydrology, use the routine method (see below). When the area is greater than five acres in size, or is smaller but appears to be highly diverse with respect to vegetation, use the intermediate-level method (Appendix 3). When detailed quantification of plant communities and more extensive documentation of other factors (soils and hydrology) are required, use the comprehensive method regardless of the wetland's size (Appendix 4). Significantly disturbed sites (e.g., sites that have been filled, hydrologically modified, cleared of vegetation, or had their soils altered) will generally require intermediate-level or comprehensive methods. In these disturbed areas, it usually will be necessary to follow a set of subroutines to determine whether the altered characteristic met the applicable criterion prior to its modification; in the case of altered wetland hydrology, it may be necessary to determine whether the area is effectively drained. Because a large area may include a diversity of smaller areas ranging from simple wetlands to vegetatively complex areas, one may use a combination of the onsite determination methods, as appropriate.

Disturbed Area Wetland Determinations

In the course of field investigations, one often encounters significantly disturbed or altered areas. Disturbed areas are wetlands that met the mandatory criteria prior to disturbance and have had vegetation, soils, and/or hydrology altered such that the require evidence of the relevant indicators for the affected criteria has been removed. The following sections discuss these situations and present procedures for distinguishing wetlands from nonwetlands. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance.

Disturbed areas have been altered either recently or in the past in some way that makes wetland identification more difficult than it would be in the absence of such changes. Disturbed areas include both wetlands and nonwetlands that have been modified to varying degrees by human activities (e.g., filling, excavation, clearing, damming, and building construction) or by natural events (e.g., avalanches, mudslides, fire, volcanic deposition, and beaver dams). Disturbed wetlands include areas subjected to deposition of fill or dredged material, removal or other alteration of vegetation, conversion to agricultural land and silviculture plantations, and construction of levees, channelization and drainage systems, and/or dams (e.g., reservoirs and beaver dams) that significantly modify an area's hydrology. In considering the effects of natural events (e.g., a wetland buried by a mudslide), the relative permanence of the change and whether the area is still functioning as a wetland must be considered. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even if still present, would not be expected to persist at the site, the area is no longer a wetland. Detailed investigations of the prior condition of such areas is generally inappropriate.

In cases where recent human activities have caused these changes, it may be necessary to determine the date of the alteration or conversion for legal

purposes. If an illegal disturbance is suspected, and the pre-disturbance condition must be determined for the purposes of wetland regulatory program enforcement purposes, then a detailed investigation of the prior and current conditions of the disturbed area (i.e., whether the area was and is wetland or non-wetland) is appropriate. However, if an area has been disturbed by legal human activities that have effected the relatively permanent removal of wetland hydrology, hydric soil, or hydrophytic vegetation, then the area is non-wetland, and a detailed investigation of the prior condition of such areas is generally inappropriate. In addition, determination of regulatory jurisdiction for such areas is subject to agency interpretation. For example, Federal wetland regulatory policy under the Clean Water Act, and agricultural program policy under the Food Security Act of 1985, as amended, interprets the relative permanence of disturbance to vegetation caused by agricultural cropping. Be sure to consult appropriate agency in making Federal wetland jurisdictional determinations in such areas.

In disturbed wetlands, field indicators for one or more of the three technical criteria for wetland identification are usually absent. Where it is necessary to determine whether the "missing" indicator(s) (especially wetland hydrology) existed prior to alteration, one should review aerial photographs, existing maps, and other available information about the site. This determination may involve evaluating a nearby reference site (similar to the original character of the one altered) for indicator(s) of the "altered" characteristic.

When a significantly disturbed condition is detected during an onsite determination, and the prior condition of the area must be determined or it is suspected that the area may still be a wetland, the following steps should be taken to determine if the "missing" indicator(s) was present before alteration and whether the criterion in question was originally met. Be sure to record findings on the appropriate data form. After completing the necessary steps in appendix 7, return to the applicable step of the onsite determination method being used and continue evaluating the site's characteristics.

Appendix 1. Offsite Preliminary Determination Method

The following steps are recommended for conducting an offsite wetland determination:

Step 1. Locate the area of interest on a U.S. Geological Survey topographic map and delineate the approximate subject area boundary on the map. Note whether marsh or swamp symbols or lakes, ponds, rivers, and other waterbodies are present within the area. If they are, then there is a good likelihood that wetland is present. Proceed to Step 2.

Step 2. Review appropriate National Wetlands Inventory (NWI) maps, State wetland maps, or local wetland maps, where available. If these maps designate wetlands in the subject area, there is a high probability that wetlands are present unless there is evidence on hand that the wetlands have been effectively drained, filled, excavated, impounded, or otherwise significantly altered since the effective date of the maps. Proceed to Step 3.

Step 3. Review SCS soil survey maps were available. In the area of interest, are there any map units listed on the county list of hydric soil map units or are there any soil map units with significant hydric soil inclusions? If YES, then at least a portion of the project area may be wetland. If this area is also shown as a wetland on NWI or other wetland maps, then there is a very high probability that the area is wetland unless it has been recently altered (check recent aerial photos, Step 4). Areas without hydric soils or hydric soil inclusions should in most cases be eliminated from further review, but aerial photos still should be examined for small wetlands to be more certain. This is especially true if wetlands have been designated on the National Wetlands Inventory or other wetland maps. Proceed to Step 4.

Step 4. Review recent aerial photos of the project area. Before reviewing aerial photos, evaluate climatological data to determine whether the photo year had normal or abnormal (high or low) precipitation two or three months, for example, prior to the date of the photo. This will help provide a useful perspective or frame-of-reference for doing photo interpretation. In some cases, aerial photos covering a multi-year period (e.g., 5–7 years) should be reviewed, especially where recent climatic conditions have been abnormal.

During photo interpretation, look for one or more signs of wetlands. For example:

(1) Hydrophytic vegetation;
(2) Surface water;
(3) Saturated soils;
(4) Flooded or drowned out crops;
(5) Stressed crops due to wetness;
(6) Greener crops in dry years;
(7) Differences in vegetation patterns due to different planting dates.

If signs of wetlands are observed, proceed to Step 5 when site-specific data are available; if site-specific data are not available, proceed to Step 6.

Caution: Accurate photo interpretation of certain wetland types requires considerable expertise. Evergreen forested wetlands, seasonally saturated wetlands, and temporarily flooded wetlands, in general, may present considerable difficulty. If not proficient in wetland photo interpretation, then one can rely more on the findings of other sources, such as NWI maps and soil surveys, or seek help in photo interpretation.

Step 5. Review available site-specific information. In some cases, information on vegetation, soils, and hydrology for the project area has been collected during previous visits to the area by agency personnel, environmental consultants or others. Moreover, individuals or experts having firsthand knowledge of the project site should be contacted for information whenever possible. Be sure, however, to know the reliability of these sources. After reviewing this information, proceed to Step 6.

Step 6. Determine whether wetlands exist in the subject area. Based on a review of existing information, a preliminary determination can be made that the area is likely to be a wetland if:

(1) Wetlands are shown on NWI or other wetland maps, and hydric soil map unit or a soil map unit with hydric soil inclusions is shown on the soil survey; or

(2) Hydric soil map unit or soil map unit with hydric soil inclusions is shown on the soil survey (Note: In the latter case, only the hydric inclusion is being evaluated as wetland.), and

(A) Site-specific information, if available, confirms hydrophytic vegetation, hydric soils, and wetland hydrology, or

(B) Wetlands are shown in aerial photos.

If, after examining the available reference material one is still unsure whether the area is likely to be wetland, then a field inspection should be conducted, whenever possible. Alternatively, more detailed information on the site's characteristics may be sought, to help make the preliminary determination.

The validity of offsite preliminary determinations are dependent on the availability of information for making a wetland determination, the quality of this information, and one's ability and experience to interpret these data. In most cases, therefore, the offsite procedure yields a preliminary

determination. For more accurate results, one must conduct an onsite inspection.

Appendix 2. Routine Onsite Determination Method

For most cases, wetland determinations can be made in the field without rigorous sampling of vegetation and soils. Two approaches for routine determinations are presented: (1) Hydric soil assessment procedure, and (2) plant community assessment procedure. In the former approach, areas that meet or may meet the hydric soil estimated to determine if hydrophytic vegetation is obvious. If so, the area is searched for indicators of wetland hydrology. If positive indicators of hydric soils, hydrophytic vegetation, and wetland hydrology are present, the area is designated as wetland. If not, then the site must undergo a more rigorous evaluation following one of the other onsite determination methods presented in the manual. The second routine approach requires initial identification of representative plant community types in the subject area and then characterization of vegetation, soils, and hydrology for each type. After identifying wetland and nonwetland communities, the wetland boundary is delineated. All pertinent observations on the three mandatory wetland criteria should be recorded on an appropriate data sheet; this should be done for all inspections to determine regulatory jurisdiction.

Hydric Soil Assessment Procedure

Step 1. Identify the approximate limits of areas that may meet the hydric soil criterion within the area of concern and sketch limits on an aerial photograph. To help identify these limits use sources of information such as Agricultural Stabilization and Conservation slides, soil surveys, NWI maps, and other maps and photographs.

(Note: This step is more convenient to perform offsite, but may be done onsite.)

Proceed to Step 2.

Step 2. Scan the areas that may meet the hydric soil criterion and determine if disturbed conditions exist. Are any significantly disturbed areas present? If yes, identify their limits for they should be evaluated separately for wetland determination purposes (usually after evaluating undisturbed areas). Refer to the section on disturbed areas, if necessary, to evaluate the altered characteristic(s) (vegetation, soils, or hydrology). If appropriate, determine whether wetland regulatory policy exempts the area from Federal regulatory jurisdiction (e.g., regulatory policy on wetlands converted to cropland. See Disturbed Areas discussion; then return to this method and continue evaluating characteristics not altered. (*Note:* Prior experience with disturbed sites may allow one to easily evaluate an altered characteristic, such as when vegetation is not present in a farmed wetland due to cultivation.) Keep in mind that if at any time during this determination, one or more of these three characteristics are found to have been significantly altered, the disturbed area determination procedures should be followed. If the area is not significantly disturbed, proceed to Step 3.

Step 3. Scan the areas that may meet the hydric soil criterion and determine if obvious signs of wetland hydrology or hydric soil are present. The wetland hydrology criterion is met for any area or portion thereof where it is obvious or known that the area is frequently inundated or saturated at the surface for a sufficient duration during the growing season in most years. Confirm the presence of hydric soil by examining the soil for appropriate properties. If the area has obvious positive indicators of wetland hydrology, the hydrology has not been significantly disturbed, the soil is organic (Histosols, except Folists) or is mineral classified as Sulfaquents, Hydraquents, or Histic subgroups of Aquic Suborders, and the area has hydrophytic vegetation, then the area is wetland. Hydrophytic vegetation should be obvious in these situations. Areas lacking obvious indicators of wetland hydrology, readily obvious hydric soils, or hydrophytic vegetation must be further examined, so proceed to Step 4.

Step 4. Refine the boundary of areas that may meet the hydric soil criterion. Verify the presence of hydric soil within the appropriate map units by digging a number of holes at least 18 inches deep along the boundary (interface) between hydric soil units and nonhydric soil units. Compare soil samples with descriptions in the soil survey report to see if they are properly mapped. In this way, the boundary of areas meeting the hydric soil criterion is further refined by field observations. In map units where only part of the unit is hydric (e.g., complexes, associations, and inclusions), locate hydric soil areas on the ground by considering landscape position and evaluating soil characteristics for hydric soil properties. (Note: Some hydric soils, especially organic soils, have not been given a series name and are referred to by common names, such as peat, muck, swamp marsh, wet alluvial land, tidal marsh, Sulfaquents, and Sulfihemists. These areas are also considered hydric soil map units. Certain hydric soils are mapped with nonhydric soils as an association or complex, while other hydric soils occur as inclusions in nonhydric map units. Only the hydric soil portion of these map units should be evaluated for the hydrophytic vegetation criteria in Step 7.) If the area meets the hydric soil criterion, proceed to Step 5.

Step 5. Consider the following:

(1) Is the area presently lacking hydrophytic vegetation or hydrologic indicators due to annual, seasonal or long-term fluctuations in precipitation, surface water, or ground-water levels?

(2) Are hydrophytic vegetation indicators lacking due to seasonal fluctuation is temperature (e.g., seasonality of plant growth)?

If the answer to either of these questions is YES or uncertain, and the area meets the description of one of the exceptions to the three criteria, proceed to the appropriate section of this manual. If the answer to both questions is NO, normal conditions are assumed to be present, so proceed to Step 6.

Note: In some cases, normal climatic conditions, such as snow cover or frozen soils, may prevent an accurate assessment of the wetland criteria; one must use best professional judgement to determine if delaying the wetland delineation is appropriate.

Step 6. Select representative observation area(s). Identify one or more observation areas that represent the area(s) meeting the hydric soil criterion. A representative observation area is one in which the apparent characteristics (determined visually) best represent characteristics of the entire community. Mark the approximate location of the observation area(s) on the aerial photo. Proceed to Step 7.

Step 7. Characterize the plant community within the area(s) meeting the hydric soil criterion. Visually estimate the percent areal cover of dominant species for the entire plant community. If dominant species are not obvious, use one of the other onsite methods. Proceed to Step 8 or to another method, as appropriate.

Step 8. Record the indicator status of dominant species within each area meeting the hydric soil criterion. Indicator status is obtained from the interagency Federal list of plants occurring in wetlands for the appropriate geographic region. Record information on an appropriate data form. Proceed to Step 9.

Step 9. Determine whether wetland is present or additional analysis is required. If the estimated percent areal cover of OBL and FACW species

(dominants) exceeds that of FACU and UPL species (dominants), the area is considered wetland and the wetland-nonwetland boundary is the line delineated by the limits of conditions that verify the wetland hydrology criterion. If not, then the point intercept or other sampling procedures should be performed to do a more rigorous analysis of site characteristics.

Plant Community Assessment Procedure

Step 1. Scan the entire project area, if possible, or walk, if necessary, and identify plant community types present. In identifying communities, pay particular attention to changes in elevation throughout the site.

Caution: In highly variable sites, such as ridge and swale complexes, be sure to stratify properly, i.e., divide the site into homogeneous landforms to evaluate each landform separately.

If possible, sketch the approximate location of each plant community on a base map, an aerial photograph of the project area, or a county soil survey map and label each community with an appropriate name.

Note: For large homogeneous wetlands, especially marshes dominated by herbaceous plants and shrub bogs dominated by low-growing shrubs, it is usually not necessary to walk the entire project area. In these cases, one can often see for long distances and many have organic mucky soils that can be extremely difficult to walk on. Forested areas, however, will usually require a walk through the entire project area.

In examining the project area, are any significantly disturbed areas observed? If yes, identify their limits for they should be evaluated separately for wetland determination purpose (usually after evaluating undisturbed areas). Refer to the section on disturbed areas to evaluate the altered characteristic(s) (i.e., vegetation, soils, or hydrology). If appropriate, determine whether wetland regulatory policy exempts the area from Federal regulatory jurisdiction (e.g., regulatory policy on wetlands converted to cropland); then return to this method to continue evaluating characteristics not altered. Keep in mind that if at any time during this determination one or more of these three characteristics are found to have been significantly altered, the disturbed area procedures should be followed. If the area is not significantly disturbed, proceed to Step 2.

Step 2. Consider the following:

(1) Is the area presently lacking hydrophytic vegetation or hydrologic indicators due to annual, seasonal or long-term fluctuations in precipitation, surface water, or ground-water levels?

(2) Are hydrophytic vegetation indicators lacking due to seasonal fluctuations in temperature (e.g., seasonality of plant growth)?

If the answer to either of these questions is Yes or uncertain, and the area meets the description of one of the exceptions to the three criteria, proceed to the appropriate section of this manual. If the answer to both questions is No, normal conditions are assumed to be present, so proceed to Step 3.

Note: In some cases, normal climatic conditions, such as snow cover or frozen soils, may prevent an accurate assessment of the wetland criteria; one must use best professional judgement to determine if delaying the wetland delineation is appropriate.

Step 3. Select representative observation area(s). Select one or more representative observation areas within each community type. A representative observation area is one in which the apparent characteristics (determined visually) best represent characteristics of the entire community. Mark the approximate location of the observation areas on the base map or photo. Proceed to Step 4.

Step 4. Characterize each plant community in the project area. Within each plant community identified in Step 1, visually estimate the dominant plant species for each valid vegetative stratum in the representative observation areas and record them on an appropriate data form. Vegetative strata may include tree, sapling, shrub, herb, woody vine, and bryophyte strata (see glossary for definitions). Make sure the size of the observation area is sufficient to insure a representative assessment of the plant community. A separate form must be completed for each plant community identified for wetland determination purposes. After identifying dominants within each vegetative stratum, proceed to Step 5.

Step 5. Record the indicator status of dominant species in all strata. Indicator status is obtained from the interagency Federal list of plants occurring in wetlands for the appropriate geographic region. Record indicator status for all dominant plant species on a data form. Proceed to Step 6.

Step 6. Determine whether the hydrophytic vegetation criterion is met. Complete the vegetation section of the data form. Portions of the project area failing this test are usually not wetlands, although under certain circumstances they may have wetland hydrology and therefore be wetland (see list of exceptions). Proceed to Step 7.

Step 7. Determine whether the hydric soil criterion is met. Locate the observation area on a county soil survey map, if possible, and determine the soil map unit delineation for the area. Using a soil auger, probe, or spade, make a hole at least 18 inches deep at the representative location in each plant community type. Examine soil characteristics and compare if possible to soil descriptions in the county soil survey report or classify to Subgroup following "Soil Taxonomy" (often requires digging a deeper hole), or look for regional indicators of significant soil saturation. If soil has been plowed or otherwise altered, which may have eliminated these indicators, proceed to the section on disturbed areas. Complete the soils section on the appropriate data sheet and proceed to Step 8 if conditions satisfy the hydric soil criterion. Areas having soils that do not meet the hydric soil criterion are nonwetlands.

(**Caution:** Become familiar with problematic hydric soils that do not possess good hydric field indicators, such as red parent material soils, some sandy soils, and some floodplain soils, so that these hydric soils are not misidentified as nonhydric soils. See discussion under "Atypical Hydric Soils".)

Step 8. Determine whether the wetland hydrology criterion is met, Record observations and complete the hydrology section on the appropriate data form. If the wetland hydrology criterion is met, proceed to Step 9. If the wetland hydrology criterion is not met, the area is nonwetland.

(**Caution:** Certain exceptions to the three criteria may not meet the hydrology criterion; see discussion of these areas.)

Step 9. Make the wetland determination. Examine data forms for each plant community identified in the project area. Each community meeting the hydrophytic vegetation, hydric soil, and wetland hydrology criteria is considered wetland. If all communities meet these three criteria, then the entire project area is a wetland. If only a portion of the project area is wetland, then the wetland-nonwetland boundary must be established. Proceed to Step 10.

Step 10. Determine the wetland-nonwetland boundary. Where a base map or annotated photo was prepared, mark each plant community type on the map or photo with a "W" if wetland or an "N" if nonwetland. Combine all "W" types into a single mapping unit, if possible, and all "N" types into another mapping unit. On the map or photo, the wetland boundary will be represented by the interface of these mapping units. If flagging the boundary on the ground, the boundary is established by determining the limits of the indicators that verify all these criteria.

Appendix 3. Intermediate-level Onsite Determination Method

On occasion, a more rigorous sampling method is required than the routine method to determine whether hydrophytic vegetation is present at a given site, especially where the boundary between wetland and nonwetland is gradual or indistinct. This circumstance requires more intensive sampling of vegetation, soils, and hydrology than presented in the routine determination method. This method also may be used for areas greater than five acres in size or other areas that are highly diverse in vegetation.

The intermediate-level onsite determination method has been developed to provide for more intensive vegetation sampling than the routine method. Two optional approaches are presented: (1) Quadrat transect sampling procedure, and (2) vegetation unit sampling procedure. The former procedure involves establishing transects within the project area and sampling plant communities along the transect within sample quadrats, with soils and hydrology also assessed in each sample plot. In contrast, the vegetation unit sampling procedure offers a different approach for analyzing the vegetation. First, vegetation units are designated in the project area and then a meander survey is conducted in each unit where visual estimates of percent areal coverage by plant species are made. Soil and hydrology observations also are made. Boundaries between wetland and nonwetland are established by examining the transitional gradient between them.

The following steps should be completed:

Step 1. Locate the limits of the project area in the field and conduct a general reconnaissance of the area. Previously the project boundary should have been determined on aerial photos or maps. Now appropriate ground reference points need to be located to insure that sampling will be conducted in the proper area. In examining the project area, were any significantly disturbed areas observed? If YES, identify their limits for they should be evaluated separately for wetland determination purposes (usually after evaluating undisturbed areas). Refer to the section on disturbed areas to evaluate the altered characteristic(s) (i.e., vegetation, soils, or hydrology); then return to this method to continue evaluating the characteristics not altered. Keep in mind that if at any time during this determination, one or more of these three characteristics is found to have been significantly altered, the disturbed areas procedures should be followed. If the area is not significantly disturbed, proceed with Step 2.

Step 2. Decide how to analyze plant communities within the project area: (1) By selecting representative plant communities (vegetation units), or (2) by sampling along a transect. Discrete vegetation units may be identified on aerial photographs, topographic and other maps, and/or by field inspection. These units will be evaluated for hydrophytic vegetation and also for hydric soils and wetland hydrology. If the vegetation unit approach is selected, proceed to Step 3. An alternative approach is to establish transects for identifying plant communities, sampling vegetation and evaluating other criteria, as appropriate. If the transect approach is chosen, proceed to Step 4.

Step 3. Identifying vegetation units for sampling. Vegetation units are identified by examining aerial photographs, topographic maps, NWI maps, or other materials or, by direct field inspection. All of the different vegetation units present in the project area should be identified. The subject area should be traversed and different vegetation units specifically located prior to conducting the sampling.

Field inspection may refine previously identified vegetation units, as appropriate. It may be advisable to divide large vegetation units into subunits for independent analysis.

(Caution: In highly variable terrain, such as ridge and swale complexes, be sure to stratify properly.) Decide which plant community to sample first and proceed to Step 7.

Step 4. Establish a baseline for locating sampling transects. Select as a baseline one project boundary or a conspicuous feature, such as road, in the project area. The baseline should be more or less parallel to the major watercourse through the area, if present, or perpendicular to the hydrologic gradient. Determine the approximate baseline length. Proceed to Step 5.

Step 5. Determine the minimum number and position of transects. Use the following to determine the minimum number and position of transects (specific site conditions may necessitate changes in intervals or additional transects). Divide the baseline length by the number of required transects to establish baseline segments for sampling. Establish one transect in each resulting baseline segment. Use the midpoint of each baseline segment as a transect starting point. For example, if the baseline is 1,200 feet in length, three transects would be established: one at 200 feet, one at 600 feet, and one at 1,000 feet from the baseline starting point. Make sure that all plant community types are included within the transects; this may necessitate relocation of one or more transects lines or establishing more transects. Each transect should extend perpendicular to the baseline. Once positions of transect lines are established, go to the beginning of the first transect and proceed to Step 6.

Step 6. Locate sample plots along the transect. Along each transect, sample plots are established within each plant community encountered to assess vegetation, soils, and hydrology. When identifying these sample plots, two approaches may be followed: (1) Walk the entire length of the transect, taking note of the number, type, and location of plant communities present (flag the location, if necessary), and on the way back to the baseline, identify plots and perform sampling, or (2) identify plant communities as the transect is walked and sample the plot at that time ("sample as you go"). The sample plot should be located so it is representative of the plant community type. When the plant community type is large and covers a significant distance along the transect, select an area that is no closer than 300 feet to a perceptible change in plant community type; mark the center of this area on the base map or photo and flag the location in the field, if necessary.

(Caution: In highly variable terrain, such as ridge and swale complexes, be sure to stratify properly to ensure best results.)

At each plant community, proceed to Step 7.

Step 7. Consider the following:

(1) Is the area presently lacking hydrophytic vegetation or hydrologic indicators due to annual, seasonal, or long-term fluctuations in precipitation, surface water, or ground-water levels?

(2) Are hydrophytic vegetation indicators lacking due to seasonal fluctuations in temperature (e.g., seasonality of plant growth)?

If the answer to either of these questions is YES or uncertain, and the area meets the description of one of the exceptions to the three criteria, proceed to the appropriate section of this manual. If the answer to both questions is no, proceed to Step 8.

(Note: In some cases, normal climatic conditions, such as snow cover or frozen soils, may prevent an accurate assessment of the wetland criteria; one must use best professional judgment to determine if delaying the wetland delineation is appropriate.)

Step 8. Characterize the vegetation of the vegetation unit or the plant community along the transect.

If analyzing vegetation units, meander through the unit making visual estimates of the percent area covered for each species in the herb, shrub, sapling, woody vine, and tree strata; alternatively, for the tree stratum determine basal area using the Bitterlich method (see Dilworth and Bell 1978; Avery and Burkart 1983). Then:

(1) Within each stratum determine and record the cover class of each species and its corresponding midpoint. The cover classes (and midpoints) are T=<1% (none); 1=1–5% (3.0); 2=6–15% (10.5); 3=16–25% (20.5); 4=26–50% (38.0); 5=51–75% (63.0); 6=76–95% (85.5); 7=96–100% (98.0).

(2) Rank the species within each stratum according to their midpoints.

(Note: If two or more species have the same midpoints and the same or essentially the same recorded percent areal cover, rank them equal; use absolute areal cover values as a tie-breaker only if they are obviously different.)

(3) Sum the midpoint values of all species within each stratum.

(4) Multiply the total midpoint values for each stratum by 50 percent.

(Note: This number represents the dominance threshold number and is used to determine dominant species.)

(5) Compile the cumulative total of the ranked species in each stratum until 50 percent of the sum of the midpoints (i.e., the dominance threshold number), for the herb, woody vine, shrub, sapling, and tree strata (or alternatively basal area for trees) is immediately exceeded. All species contributing areal cover or basal area to the 50 percent threshold are considered dominants, plus any additional species representing 20 percent or more of the total cover class midpoint values for each stratum or the basal area for tree stratum.

(Note: If the threshold is reached by two or more equally ranked species, consider them all dominants, along with any higher ranked species. If all species are equally ranked, consider them all dominants.)

(6) Record all dominant species on an appropriate data sheet and list indicator status of each. Proceed to Step 9.

If using the transect approach, sample vegetation in each stratum (e.g., tree, shrub, herb, etc.) occurring in the sample plots using the following quadrant sizes: (1) A 5-foot radius for bryophytes and herbs, and (2) a 30-foot radius for trees, saplings, shrubs, and woody vines. Plot size and shape may be changed as necessary to meet site conditions, but be sure that it is sufficient to adequately characterize the plant community. Determine dominate species for each stratum by estimating one or more of the following as appropriate: (1) Relative basal area (trees); (2) areal cover (trees, saplings, shrubs, herbs, woody vines, and bryophytes); or (3) stem density (shrubs, saplings, herbs, and woody vines). When estimating areal cover, use cover classes T (trace) through 7 and use the midpoints of the cover classes to determine dominants, see substeps 1 through 5 above. All plants covering the plot and representative of the plant community under evaluation should be counted in the cover estimate; plants overhanging from adjacent plant communities should not be counted. Record all dominant species on an appropriate data sheet and list the indicator status of each. Proceed to Step 9.

Step 9. Determine whether the hydrophytic vegetation criterion is met. Areas that do not meet the hydrophytic vegetation criterion, and that do not meet one of the descriptions of exceptions, usually are not wetlands. If the hydrophytic vegetation criterion is met, Proceed to Step 10 after completing the vegetation section of the data sheet.

Step 10. Determine whether the hydric soil criterion is met. Locate the observation area on a county soil survey map, if possible, and determine the soil map unit delineation for the area. Using a soil auger, probe, or spade, make a hole at least 18 inches deep at the representative location in each plant community type. Examine soil characteristics and compare if possible to soil descriptions in the county soil survey report or classify to Subgroup following "Soil Taxonomy" (often requires digging a deeper hole), or look for regional indicators of significant soil saturation. If soil has been plowed or otherwise altered, which may have eliminated these indicators, proceed to the section on disturbed areas. Complete the soils section on the appropriate data sheet and proceed to Step 11 if conditions satisfy the hydric soil criterion. Areas having soils that do not meet the hydric soil criterion are nonwetlands.

(Caution: Become familiar with hydric soils that do not possess good hydric field indicators, such as red parent material soils, some sandy soils, and some floodplain soils, so that these hydric soils are not misidentified as nonhydric soils; see the "Atypical Hydric Soils discussion.)

Step 11. Determine whether the wetland hydrology criterion is met. Record observations and complete the hydrology section on the appropriate data form. If the wetland hydrology criterion is met, proceed to Step 12. If the wetland hydrology criterion is not met, the area is nonwetland.

(Caution: Certain exceptions to the three criteria may not meet the hydrology criterion: see discussion of these areas.)

Step 12. Make the wetland determination for the plant community or vegetation unit. Examine the data forms for the plant community (sample plot) or vegetation unit. When the community or unit meets the hydrophytic vegetation, hydric soil, and wetland hydrology criteria, the area is considered wetland. Complete the summary data sheet; proceed to Step 13 when continuing to sample the transect or other vegetation units, or to Step 14 when determining a boundary between wetland and nonwetland plant communities or units.

(Note: Before going on, double check all data sheets to ensure that the forms are completed properly.)

Step 13. Sample other plant communities along the transect or other vegetation units. Repeat Steps 6 through 12 for all remaining plant communities along the transect if following transect approach, or repeat Steps 7 through 12 at the next vegetation unit. When sampling is completed for this transect, proceed to Step 14, or when sampling is completed for all vegetation units, proceed to Step 15.

Step 14. Determine the wetland-nonwetland boundary point along the transect. When the transect contains both wetland and nonwetland plant communities, then a boundary must be established. Proceed along the transect from the wetland plot toward the nonwetland plot. Look for the occurrence of UPL and FACU species, the appearance of nonhydric soil types, subtle changes in hydrologic indicators, and/or slight changes in topography. When such features are noted, look closely for evidence of wetland hydrology in the soil and locate the wetland boundary (i.e., the point at which the wetland hydrology criterion is no longer met). Establish sample plots on each side of the boundary (e.g., within 50 feet) and repeat Steps 8 through 12. If existing plots are within a reasonable distance, additional plots may not be necessary, but always identify the features that were used to identify the boundary. Data sheets should be completed for each new plot. Mark the position of the wetland boundary point on the base map or photo and stake or flag the boundary in the field, as necessary. Continue along the transect until the boundary points between all wetland and nonwetland plots have been established.

(Caution: In areas with a high interspersion of wetland and nonwetland plant

communities, several boundary determinations will be required.) When all wetland determinations along this transect have been completed, proceed to Step 16.

Step 15. Determine the wetland-nonwetland boundary between adjacent vegetation units. Review all completed copies of the data sheets for each vegetation unit. Identify each unit as either wetland (W) or nonwetland (N). When adjacent vegetation units contain both wetland and nonwetland communities, a boundary must be established. Walk the interface between the two units from the wetland unit toward the nonwetland unit and look for changes in vegetation, soils, hydrologic indicators, and/or elevation. As a general rule, at 100-foot intervals or whenever changes in the vegetation unit's characteristics are noted, look for evidence to locate the wetland-nonwetland boundary. At each designated boundary point, complete data sheets for new observation areas immediately upslope and downslope of the wetland-nonwetland boundary (i.e., one set for the wetland unit and one for the nonwetland unit), repeat Steps 8 through 12 for each area, and record the distance and compass directions between the boundary points. Record evidence of wetland hydrology as close to the boundary as possible, and record the features that were used to delineate the boundary. Mark the position of the wetland boundary point on the base map or photo and stake or flag the boundary in the field, as necessary. Based on observations along the interface, identify other of boundary points between each wetland unit and nonwetland unit. Repeat this step for all adjacent vegetation units of wetland and nonwetland. When wetland boundary points between all adjacent wetland and nonwetland units have been established, proceed to Step 16.

Step 16. Sample other transects and make wetland determinations along each. Repeat Steps 5 through 14 for each remaining transect. When wetland boundary points for all transects have been established, proceed to Step 17.

Step 17. Determine the wetland-nonwetland boundary for the entire project area. Examine all completed copies of the data sheets, and mark the location of each plant community type along the transect on the base map or photo, when used.

(Note: This has already been done for the vegetation unit approach.)

Identify each plant community as either wetland (W) or nonwetland (N), if it has not been done previously. If all plant communities are wetlands, then the entire project area is wetland. If all communities are nonwetlands, then the entire project area is nonwetland. If both wetlands and nonwetlands are present, identify the boundary points on the base map and connect these points on the map by generally following contour lines to separate wetlands from nonwetlands. Confirm this boundary by walking the contour lines between the transects or vegetation units, as appropriate. Should anomalies be encountered, it will be necessary to establish short transects in these areas to refine the boundary; make any necessary adjustments to the boundary on the base map and/or on the ground. If those areas are significant in scope, be sure to record data used for the boundary determination. When marking the boundary for subsequent surveying by engineers, the boundary points should be flagged or marked otherwise to facilitate the survey.

Appendix 4. Comprehensive Onsite Determination Method

The comprehensive determination method is the most detailed, complex, and labor-intensive approach of the three recommended types of onsite determinations. It is usually reserved for highly complicated and/or large project areas, and/or when the determination requires rigorous documentation. Due to the latter situation, this type of onsite determination may be used for areas of any size.

In applying this method, a team of experts, including a wetland ecologist and a soil scientist, is often needed, especially when rigorous documentation of plants and soils are required. It is possible, however, for a highly trained wetland boundary specialist to singly apply this method.

Two alternative approaches of the comprehensive onsite determination method are presented: (1) Quadrat sampling procedure and (2) point intercept sampling procedure. The former approach establishes quadrats or sampling areas in the project site along transects, while the latter approach involves a frequency analysis of vegetation at sampling points along transects. The point intercept sampling procedure requires that the limits of potential hydric soils be established prior to evaluating the vegetation. In many cases, soil maps are available to meet this requirement, but in other cases a soil scientist may need to inventory the soils before applying this method. The quadrat sampling procedure, which involves identifying plant communities along transects and analyzing vegetation, soils, and hydrology within sample plots (quadrats), may be the preferred approach when soil maps are unavailable or the individual is more familiar with plant identification.

Quadrat Sampling Procedures

Prior to implementing this determination procedure, read the sections of this manual that discuss disturbed areas, and exceptions to the three criteria; this information is often relevant to project areas requiring a comprehensive determination.

Step 1. Locate the limits of the project area in the field. Previously, the project boundary should have been determined on aerial photos or maps. Now appropriate ground reference points need to be located to ensure that sampling will be conducted in the proper area. Proceed to Step 2.

Step 2. Stratify the project area into different plant community types. Delineate the locations of these types on aerial photos or base maps and label each community with an appropriate name. (Caution: In highly variable terrain, such as ridge and swale complexes, be sure to stratify properly to ensure best results.) In evaluating the subject area, were any significantly disturbed areas observed? If YES, identify their limits for they should be evaluated separately for wetland determination purposes (usually after evaluating undisturbed areas). Refer to the section on disturbed areas to evaluate the altered characteristic(s) (i.e., vegetation, soils, and/or hydrology); then return to this method to continue evaluating the characteristics not altered. Keep in mind that if at any time during this determination, it is found that one or more of these three characteristics have been significantly altered, the disturbed areas wetland determination procedures should be followed. If the area is not significantly disturbed, proceed to Step 3.

Step 3. Establish a baseline for locating sampling transects. Select as a baseline one project boundary or a conspicuous feature, such as a road, in the project area. The baseline ideally should be more or less parallel to the major watercourse through the area, if present, or perpendicular to the hydrologic gradient. Determine the approximate baseline length and record its origin, length, and compass heading in the field notebook. When a limited number of transects are planned, a baseline may not be necessary provided there are sufficient fixed points (e.g., buildings, walls, and fences) to serve as starting points for the transects. Proceed to Step 4.

Step 4. Determine the required number and position of transects. The number of transects necessary to adequately

characterize the site will vary due to the area's size and complexity of habitats. In general, it is best to divide the baseline into a number of equal segments and use the mid-point of each baseline segment as the transect starting point. For example, if the baseline is 1,600 feet in length, four transects will be established; one at 200 feet, one at 600 feet, one at 1,000 feet, and one at 1,400 feet from the baseline starting point. Each transect should extend perpendicular to the baseline.

Use the following as a guide to determine the minimum number of baseline segments:

• If the baseline exceeds five miles, baseline segments should be 0.5 mile in length.

Make sure that each plant community type is included in at least one transect; if not, modify the sampling design accordingly by relocating one or more transect lines or by establishing additional transects. When the starting points for all required transects have been established, go to the beginning of the first transect and proceed to Step 5.

Step 5. Identify sample plots along the transect. Along each transect, sample plots may be established in two ways: (1) Within each plant community encountered (the plant community transect sampling approach); or (2) at fixed intervals (the fixed interval transect sampling approach); these plots will be used to assess vegetation, soils, and hydrology.

When employing the plant community transect sampling approach, two techniques for identifying sample plots may be followed: (1) Walk the entire length of the transect, taking note of the number, type, and location of plant communities present (flag the locations, if necessary) and on the way back to the baseline, record the length of the transect, identify sample plots and perform sampling; or (2) identify plant communities as the transect is walked, sample the plot at that time ("sample as you go"), and record the length of the transect.

When conducting the fixed interval transect sampling approach, establish sample plots along each transect using the following as a guide:

The first sample plot should be established at a distance of 50 feet from the baseline. When obvious nonwetlands occupy a long segment of the transect from the baseline, begin the first plot in the nonwetland at approximately 300 feet from the point where the nonwetland begins to intergrade into a potential wetland community type. Keep in mind that additional plots will be required to determine the wetland-nonwetland boundary between fixed points. In large areas having a mosaic of plant communities, one transect may contain several wetland boundaries.

If obstacles such as a body of water or impenetrable thicket prevent access through the length of the transect, access from the opposite side of the project area may be necessary to complete the transect; take appropriate compass reading and location data. At each sample plot (i.e., plant community or fixed interval area), proceed to Step 6.

Step 6. Consider the following:

(1) Is the area presently lacking hydrophytic vegetation or hydrologic indicators due to annual, seasonal or long-term fluctuations in precipitation, surface water, or ground-water levels?

(2) Are hydrophytic vegetation indicators lacking due to seasonal fluctuations in temperatures (e.g., seasonality of plant growth)?

If the answer to either of these questions is Yes or uncertain, and the area meets the description of one of the exceptions in this manual, proceed to the appropriate section of this manual. If the answer to both questions is No, proceed to Step 7 when following the plant community transect approach. If following the fixed interval approach, go to the appropriate fixed point along the transect and proceed to Step 8.

(Note: In some cases, normal climatic conditions, such as snow cover or frozen soils, may prevent an accurate assessment of the wetland criteria; one must use best professional judgment to determine if delaying the wetland delineation is appropriate.)

Step 7. Locate a sample plot in the plant community type encountered. Choose a representative location along the transect in this plant community. Select an area that is no closer than 50 feet from the baseline or from any perceptible change in the plant community type. Mark the center of the sample plot on the base map or photo and flag the point in the field. Additional sample plots should be established within the plant community at 300-foot intervals along the transect or sooner if a different plant community is encountered.

(Note: In large-sized plant communities, a sampling interval larger than 300 feet may be appropriate, but try to use 300-foot intervals first.)

Proceed to Step 8.

Step 8. Lay out the boundary of the sample plot. A circular sample plot with a 30-foot radius should usually be established, however, the size and shape of the plot may be changed to match local conditions (e.g., narrow ridges and swales) as necessary. At the flagged center of the plot, use a compass to divide the circular plot into four equal sampling units at 90°, 180°, 270°, and 360°. Mark the outer points of the plot with flagging. Proceed to Step 9.

Step 9. Characterize the vegetation and determine dominant species within the sample plot. Sample the vegetation in each layer or stratum (i.e., tree, sapling, shrub, herb, woody vine, and bryophyte) within the plot using the following procedures for each vegetative stratum and enter data on appropriate data sheet:

(1) Herb stratum

(A) Sample this stratum using corresponding approach:

(1) Plant community transect sampling approach:

(a) Select one of the following designs:

(i) Eight (8)—8" x 20" sample quadrats (two for each sampling unit within the circular plot); or

(ii) Four (4)—20" x 20" sample quadrats (one for each sample unit within the plot); or

(iii) Four (4)—40" x 40" sample quadrats (one for each sample unit).

(Note: Alternate shapes of sample quadrats are acceptable provided they are similar in area to those listed above.)

(b) Randomly toss the quadrat frame into the understory of the appropriate sample unit of the plot.

(c) Record percent areal cover of each plant species.

(d) Repeat (b) and (c) as required by the sampling scheme.

(e) Construct a species area curve for the plot to determine whether the number of quadrats sampled sufficiently represent the vegetation in the stratum; the number of samples necessary corresponds to the point at which the curve levels off horizontally; if necessary, sample additional quadrats within the plot until the curve levels off.

(f) For each plant species sampled, determine the average percent areal cover by summing the percent areal cover for all sample quadrats within the plot and dividing by the total number of quadrats. Proceed to Step B below.

(2) Fixed interval sampling approach:

(a) Place one (1)—40" × 40" sample quadrat centered on the transect point.

(b) Determine percent areal coverage for each species. Proceed to substep B below.

(B) Rank plant species by their average percent areal cover, beginning with the most abundant species.

(C) Sum the percent cover (fixed interval sampling approach) or average percent cover (plant community transect sampling approach).

(D) Determine the dominance threshold number—the number at which 50 percent of the total dominance measure (i.e., total cover) for the stratum is represented by one or more plant species when ranked in descending order of abundance (i.e., from most to least abundant).

(E) Sum the cover values for the ranked plant species beginning with the most abundant until the dominance threshold number is immediately exceeded; these species contributing to surpassing the threshold number are considered dominants, plus any additional species representing 20 percent or more of the total cover of the stratum; denote dominant species with an asterisk on the appropriate data form.

(F) Designate the indicator status of each dominant.

(2) Bryophyte stratum (mosses, horned liverworts, and true liverworts): Bryophytes may be sampled as a separate stratum in certain wetlands, such as shrub bogs, moss-lichen wetlands, and the wetter wooded swamps, where they are abundant and represent an important component of the plant community. If treated as a separate stratum, follow the same procedures as listed for herb stratum. In many wetlands, however, bryophytes are not abundant and should be included as part of the herb stratum.

(3) Shrub stratum (woody plants usually between 3 and 20 feet tall, including multi-stemmed, bushy shrubs and small trees below 20 feet):

(A) Determine the percent areal cover of shrub species within the entire plot by walking through the plot, listing all shrub species and estimating the percent areal cover of each species.

(B) Indicate the appropriate cover class (T and 1 through 7) and its corresponding midpoints (shown in parentheses) for each species: T = <1% cover (None); 1 = 1–5% (3.0); 2 = 6–15% (10.5); 3 = 16–25% (20.5); 4 = 26–50% (38.0); 5 = 51–75% (63.0); 6 = 76–95% (85.5); 7 = 96–100% (98.0).

(C) Rank shrub species according to their midpoints, from highest to lowest midpoint;

(D) Sum the midpoint values of all shrub species.

(E) Determine the dominance threshold number—the number at which 50 percent of the total dominance measure (i.e., cover class midpoints) for the stratum is represented by one or more plant species when ranked in descending order.

(F) Sum the midpoint values for the ranked shrub species, beginning with the most abundant, until the dominance threshold number is immediately exceeded; these species are considered dominants, plus any additional species representing 20 percent or more of the total midpoint values of the stratum; identify dominant species (e.g., with an asterisk) on the appropriate data form.

(G) Designate the indicator status of each dominant.

(4) Sapling stratum (young or small trees greater than or equal to 20 feet tall and with a diameter at breast height less than 5 inches): Follow the same procedures as listed for the shrub stratum or the tree stratum (i.e., plot sampling technique), whichever is preferred.

(5) Woody vine stratum (climbing or twining woody plants): Follow the same procedures as listed for the shrub stratum.

(6) Tree stratum (woody plants greater than or equal to 20 feet tall and with a diameter at breast height equal to or greater than 5 inches): Determine the basal area of the trees by individual and by species within the 30-foot radius sample plot. Basal area for individual trees can be calculated by measuring diameter at breast height (dbh) with a diameter tape and converting diameter to basal area using the formula A = pi(d)(d)/4 (where A = basal area, pi = 3.1416, and d = dbh).

Do the following steps:

(A) Locate and mark, if necessary, a sample unit (plot) with a radius of 30 feet, or change the shape of the plot to match topography, or increase size of plot based on species area curve assessment.

(Note: A larger sampling unit may be required when trees are large and widely spaced.)

(B) Identify each tree within the plot, measure its dbh (using a diameter tape), compute its basal area, then record data on the data form.

(Note: Compute basal area using the formula A = pi(d)(d)/4, where A = basal area, pi = 3.1416, and d = dbh. To expedite this calculation, use a hand calculator into which the following conversion factor is stored—0.005454 for diameter data in inches or 0.78535 in feet. Basal area in square feet of an individual tree can be obtained by squaring the tree diameter and multiplying by the stored conversion factor).

(C) Calculate the total basal area for each tree species by summing the basal area values of all individual trees of each species.

(D) Rank species according to their total basal area, in descending order from the largest basal area to the smallest.

(E) Calculate the total basal area value of all trees in the plot by summing the total basal area for all species.

(F) Determine the dominant trees species; dominant species are those species (when ranked in descending order and cumulatively totaled) that immediately exceed 50 percent of the total basal area value for the plot, plus any additional species comprising 20 percent or more of the total basal area of the plot; record the dominant species on the appropriate data form.

(G) Designate the indicator status of each dominant (i.e., OBL, FACW, FAC, FACU, or UPL).

After determining the dominants for each stratum, proceed to Step 10.

Setp 10. Determine whether the hydrophytic vegetation criterion is met. Complete the vegetation section of the summary data sheet. If the vegetation fails to be dominated by these types of species, the plot is usually not a wetland, however, it may constitute hydrophytic vegetation under certain circumstances (see list of exceptions). If hydrophytic vegetation is present, proceed to Step 11.

Step 11. Determine whether the hydric soil criterion is met. Locate the observation area on a county soil survey map, if possible, and determine the soil map unit delineation for the area. Using a soil auger, probe, or spade, make a hole at least 18 inches deep at the representative location in each plant community type. Examine soil characteristics and compare if possible to soil descriptions in the county soil survey report or classify to Subgroup following "Soil Taxonomy" (often requires digging a deeper hole), or look for regional indicators of significant soil saturation. If soil has been plowed or otherwise altered, which may have eliminated these indicators, proceed to the section on disturbed areas. Complete the soils section on the appropriate data sheet and proceed to Step 9 if conditions satisfy the hydric soil criterion. Areas having soils that do not meet the hydric soil criterion are nonwetlands. (Caution: Become familiar with hydric soils that do not possess good hydric field indicators, such as red parent material soils, some sandy soils, and some floodplain soils, so that these hydric soils are not misidentified as nonhydric soils; see the "Atypical Hydric Soils" discussion.)

Step 12. Determine whether the wetland hydrology criterion is met. Record observations and complete the hydrology section on the appropriate data form. If the wetland hydrology criterion is met, proceed to Step 13. If the wetland hydrology criterion is not met, the area is nonwetland.

(Caution: Certain exceptions to the three criteria may not meet the hydrology criterion; see discussion of these areas.)

Step 13. Make the wetland determination for the sample plot. Examine the data forms for the plot. When the plot meets the hydrophytic vegetation, hydric soil, and wetland hydrology criteria, it is considered wetland. Complete the summary data sheet; proceed to Step 14 when continuing to sample transects, or to Step 15 when determining a boundary between wetland and nonwetland sample plots.

(Note: Double check all data sheets to ensure that they are completed properly before going to another plot.)

Step 14. Take other samples along the transect. Repeat Steps 5 through 13, as appropriate. When sampling is completed for this transect proceed to Step 15.

Step 15. Determine the wetland-nonwetland boundary point along the transect. When the transect contains both wetland and nonwetland plots, then a boundary must be established. Proceed along the transect from wetland plot toward the nonwetland plot. Look for the occurrence of UPL and FACU species, the appearance of nonhydric soil types, subtle changes in hydrologic indicators, and/or slight changes in topography. When such features are noted, evaluate the three criteria and locate the wetland-nonwetland boundary (i.e., the point at which one of the three wetland hydrology criterion is no longer met; make sure, however, that this area does not qualify as a problem area wetland). Establish new sample plots on each side of the boundary (e.g., within 50 feet) and repeat Steps 8 through 12. If existing plots are within a reasonable distance of the boundary, additional plots may not be necessary, but always document the features that were used to identify the boundary. Data sheets should be completed for each plot. Mark the position of the wetland boundary point on the base map or photo and place a surveyor flag or stake at the boundary point in the field, as necessary. Continue along the transect until the boundary points between all wetland and nonwetland plots have been established.

(Caution: In areas with a high interspersion of wetland and nonwetland plant communities, several boundary determinations will be required.)

When all wetland determinations along this transect have been completed, proceed to Step 16.

Step 16. Sample other transects and make wetland determinations along each. Repeat Steps 5 through 15 for each remaining transect. When wetland boundary points for all transects have been established, proceed to Step 17.

Step 17. Determine the wetland-nonwetland boundary for the entire project area. Examine all completed copies of the data sheets and mark the location of each plot on the base map or photo. Identify each plot as either wetland (W) or nonwetland (N) on the map or photo. If all plots are wetlands, then the entire project area is wetland. if all plots are nonwetlands, then the entire project area is nonwetland. if both wetland and nonwetland plots are present, identify the boundary points on the base map or on the ground, and connect these points on the map by generally following contour lines to separate wetlands from nonwetlands. Confirm this boundary on the ground by walking the contour lines between the transects. Should anomalies be encountered, it will be necessary to establish short transects in these areas to refine the boundary, apply Step 15, and make any necessary adjustments to the boundary on the base map and/or on the ground. It may be worthwhile to place surveyor flags or stakes at the boundary points, especially when marking the boundary for subsequent surveying by engineers.

Point Intercept Sampling Procedure

The point intercept sampling procedure is a frequency analysis of vegetation used in areas that may meet the hydric soil and wetland hydrology criteria. It involves first identifying areas that may meet the hydric soil and wetland hydrology criteria within the area of concern and then refining the boundaries of areas that may meet the hydric soil criterion for further examination. Transects are then established for analyzing vegetation and determining whether hydrophytic vegetation criterion is met by calculating a prevalence index.

Step 1. Identify the approximate limits of areas that may meet the hydric soil criterion within the area of concern and sketch limits on an aerial photograph. To help identify these limits use sources of information such as Agricultural Stabilization and Conservation Service slides, soil surveys, NWI maps, and other maps and photographs.

(Note: This step is more convenient to perform offsite, but may be done onsite; some modification of study area lines may be required after seeing the site in the field).

Areas that may meet the hydric soil criterion should be stratified into areas of similar soils and similar vegetation lifeforms (e.g., forested wetland, shrub wetland, and emergent wetland) for further analysis. Proceed to Step 2.

Step 2. Scan the areas that may meet the hydric soil criterion and determine if disturbed conditions exist. Are any significantly disturbed areas present? If YES, identify their limits for they should be evaluated separately for wetland determination purposes (usually after evaluating undisturbed areas). Refer to the section on disturbed areas, if necessary, to evaluate the altered characteristic(s) (vegetation, soils, or hydrology), then return to this method and continue evaluating characteristics not altered.

(Note: Prior experience with disturbed sites may allow one to easily evaluate an altered characteristic, such as when vegetation is not present in a farmed wetland due to cultivation.)

Keep in mind that if at any time during this determination one or more of these three characteristics is found to have been significantly altered, the disturbed area wetland determination procedures should be followed. If the area is not significantly disturbed, proceed to Step 3.

Step 3. Scan the areas that may meet the hydric soil criterion and determine if obvious signs of wetland hydrology or hydric soil are present. The wetland hydrology criterion is met for any area or portion thereof where, it is obvious or known that the area is frequently inundated or saturated at the surface during the growing season. Confirm the presence of hydric soil by examining the soil for appropriate properties and take note of dominant plants which should easily meet the hydrophytic vegetation criterion. If the area's hydrology has not been significantly modified and the soil is organic (Histosols, except Folists) or is mineral classified as Sulfaquents, Hydraquents, or Histic Subgroups of Aquic Suborders according to "Soil Taxonomy", and the area has hydrophytic vegetation, then the area is considered wetland. Hydrophytic vegetation should be fairly obvious in these situations. Areas lacking obvious indicators of wetland hydrology, hydric soils, or hydrophytic vegetation must be further examined, so proceed to Step 4.

Step 4. Refine the boundary of areas that meet the hydric soil criterion. Verify the presence of hydric soil within the appropriate map units by digging a number of holes at least 18 inches deep along the boundary (interface) between hydric soil units and nonhydric soil units. Compare soil samples with descriptions in the soil survey report to see if they are properly mapped, and look for soil properties caused by

wetland hydrology. In this way, the boundary of areas meeting the hydric soil criterion is further refined by field observations. In map units where only part of the unit is hydric (e.g., complexes, associations, and inclusions), locate hydric soil areas on the ground by considering landscape position and evaluating soil characteristics of the hydric soil portion or for properties caused by wetland hydrology.

(Note Some hydric soils, especially organic soils, have not been given a series name and are referred to by common names, such as peat, muck, swamp, marsh, wet alluvial land, tidal marsh, Sulfaquents, and Sulfihemists; these areas are also considered hydric soil map units and should appear on the county lists of hydric soil map units. Certain hydric soils are mapped with nonhydric soils as an association or complex, while other hydric soils occur as inclusions in nonhydric soil map units. Only the hydric soil portion of these map units should be evaluated for hydrophytic vegetation.)

In areas where hydric soils are not easily located by landscape position and soil characteristics (morphology), a soil scientist should be consulted.

(Caution: Become familiar with hydric soils that do not possess good hydric field indicators, such as red parent material soils, some sandy soils, and some floodplains soils, so that these hydric soils are not misidentified as nonhydric soils. See "Atypical Hydric Soils" discussion.)

(Note: If the project area does not have a soil map, hydric soil areas must be determined in the field to use the point intercept sampling method. Consider landscape position, such as depressions, drainageways, floodplains, and seepage slopes, and either classify the soil or look for field indicators of hydric soil, then delineate the hydric soil areas accordingly. If the boundary of the hydric soil areas cannot be readily delineated, one should use the quadrat sampling procedure.)

After establishing the boundary of the area in question, proceed to Step 5.

Step 5. Consider the following:

(1) Is the area presently lacking hydrophytic vegetation or hydrologic indicators due to annual, seasonal, or long-term fluctuations in precipitation, surface water, or ground water levels?

(2) Are hydrophytic vegetation indicators lacking due to seasonal fluctuations in temperature (e.g., seasonality of plant growth)?

If the answer to either of these questions is Yes or uncertain, and the area meets the description of one of the exceptions in this manual, proceed to the appropriate section of this manual. If the answer to both questions is NO, proceed to Step 6.

Note: In some cases, normal climatic conditions, such as snow cover or frozen soils, may prevent an accurate assessment of the wetland criteria; one must use best professional judgment to determine if delaying the wetland delineation is appropriate.

Step 6. Determine random starting points and random directions for three 200-foot line transects in each area that meets or may meet the hydric soil criterion.

Note: More than three transects may be required depending on the standard error obtained for the three transects.

There are many ways to determine random starting points and random transect direction. The following procedures are suggested:

(1) Starting point—Starting points for the transects are selected randomly along the perimeter of the area to be examined. Determine the approximate perimeter length and select three random numbers (from a table for generating random numbers or other suitable method); these random numbers indicate the position of the starting points for the three transects; pick a point along the perimeter to begin pacing off the distance to the starting points.

(2) Transect direction—At a starting point, spin a pencil or similar pointed object in the air and let it fall to the ground. The direction that the pencil is pointing indicates the direction of the transect. Proceed to Step 7.

Step 7. Lay out the transect in the established direction. If the transect crosses the hydric soil boundary (into the nonhydric soil area), bend the line back into the hydric soil area by randomly selecting a new direction for the transect following the procedure suggested above. Mark the approximate location of the transect on a base map or aerial photo. Proceed to Step 8.

Step 8. Record plant data (e.g., species name, indicator group, and number of occurrences) at interval points along the transect. Only individual plants with stems located in the subject area (i.e., soil type) should be recorded. At the starting point and at each point on 2-foot intervals along the transect, record all individual plants that would intersect an imaginary vertical line extending through the point. Count each individual plant only once per sample point; each individual of a single species counts as a separate plant for the tally (e.g., three individuals of red maple count as three hits for red maple at that single point). If this imaginary line has no plants intersecting it (either above or below the sample point), record nothing. Identify each plant observed to species (or other taxonomic category if species cannot be identified), enter species name on the Prevalence Index Worksheet, and record all occurrences of each species along the transect. For each species listed, identify its indicator group from the appropriate regional list of plant species that occur in wetlands (i.e., OBL, FACW, FAC, FACU, and UPL). Plant species not recorded on the lists are assumed to be upland species. If no regional indicator status and only one national indicator status is assigned, apply the national indicator status to the species. If no regional indicator status is assigned and more than one national indicator status is assigned, do not use the species to calculate a prevalence index. If the plant species is on the list and no regional or national indicator status is assigned, do not use the species to calculate the prevalence index. For a transect to be valid for a prevalence calculation, at least 80 percent of the occurrences must be plants that have been identified and placed in an indicator group. Get help in plant identification if necessary. Unidentified plants or plants without indicator status are recorded but are not used to calculate the prevalence index. Proceed to Step 9.

Step 9. Calculate the total frequency of occurrences for each species (or other taxonomic category), for each indicator group of plants, and for all plant species observed, and enter on the Prevalence Index Worksheet. The frequency of occurrences of a plant species equals the number of times it occurs at the sampling points along the transect. Proceed to Step 10.

Step 10. Calculate the prevalence index for the transect using the following formula:

$$PIi = \frac{1Fo+2Ffw+3Ff+4Ffu+5Fu}{Fo+Ffw+Ff+Ffu+Fu}$$

where

PIi = Prevalence Index for transect i;
Fo = Frequency of occurrence of obligate wetland (OBL) species;
Ffw = Frequency of occurrence of facultative wetland (FACW) species;
Ff = Frequency of occurrence of facultative (FAC) species;
Ffu = Frequency of occurrence of facultative upland (FACU) species;
Fu = Frequency of occurrence of upland (UPL) species.

After calculating and recording the prevalence index for this transect, proceed to Step 11.

Step 11. Repeat Steps 5 through 10 for two other transects. After completing the three transects, proceed to Step 12.

Step 12. Calculate a mean prevalence index for the three transects. To be

considered wetland, a hydric soil area usually must have a mean prevalence index (PIM) of less than 3.0. A minimum of three transects are required in each delineated area of hydric soil, but enough transects are required so that the standard error for PIM does not exceed 0.20 percent.

Compute the mean prevalence index for the three transects by using the following formula:

$$PIM = \frac{PIT}{N}$$

where

PIM = mean prevalence index for transects;

PIT = sum of prevalence index values for transects;

all

N = total number of transects.

After computing the mean prevalence index for the three transects, proceed to Step 13.

Step 13. Calculate the standard deviation(s) for the prevalence index using the following formula:

$$s = \sqrt{\frac{(PI1-PIM)^2 + (PI2-PIM)^2 + (PI3-PIM)^2}{N-1}}$$

(Note: See formulas in Steps 8 and 10 for symbol definitions.)

After performing this calculation, proceed to Step 14.

Step 14. Calculate the standard error (sx) of the mean prevalence index using the following formula:

$$\overline{sx} = \frac{S}{\sqrt{N}}$$

where

S = standard deviation for the Prevalence Index

N = total number of transects

(Note: The $\overline{sx}$ cannot exceed 0.20. If $\overline{sx}$ exceeds 0.20, one or more additional transects are required. Repeat Steps 6 through 14, as necessary, for each additional transect.)

When $\overline{sx}$ for all transects does not exceed 0.20, proceed to Step 15.

Step 15. Record final mean prevalence index value for each hydric soil map unit and make a wetland determination. All areas having a mean prevalence index of less than 3.0 meet the hydrophytic vegetation criterion. If the community has a prevalence index equal to or greater than 3.0, it is usually not hydrophytic vegetation except under certain circumstances; consult the section on exceptions. Proceed to Step 16.

Step 16. Determine whether the wetland hydrology criterion is met. Record observations and complete the hydrology section on the appropriate data form. If the wetland hydrology criterion is met, then the area is considered a wetland. If the area has been hydrologically disturbed, one must determine whether the area is effectively drained before making a wetland determination; this type of area should have been identified in Step 2 (see disturbed areas discussion). If the area is effectively drained, it is considered nonwetland; if it is not, the wetland hydrology criterion is met and the area is considered a wetland.

(Caution: Seasonally saturated wetland may not appear to meet the hydrology criterion at certain times of the growing season; see discussion of exceptions.)

Step 17. Delineate the wetland boundary. After identifying the wetland, delineate the boundary by refining the limits of the area that meets all three criteria (including any problem area wetlands). Mark the boundaries with flagging tape, if necessary.

Appendix 5. Descriptions of wetlands that are exceptions to the three criteria

Prairie Potholes

Potholes are glacially-formed depressions that are capable of storing water (Eisenlohr 1972). They are generally located in the north central United States and southern Canada. Although potholes may occur in forested areas, the majority occur in the prairie region where they are subject to arid or semi-arid climatic conditions. Most potholes are small, generally less than an acre in size.

Pothole soils are generally poorly drained, slowly permeable soils capable of ponding water. Precipitation is the basic source of water in potholes. Runoff from the drainage area is highly variable, but it is the key in determining if and how long ponding will occur. Precipitation in the pothole region varies appreciably from year to year. Average precipitation is far too small to meet the demand of evaporation and as a result most potholes are dry for a significant portion of the year, containing water for only a short period generally early in the growing season. In years of drought, potholes may not pond water at all. However in most years, seasonal replenishment can be expected (Eisenlohr 1972).

In certain areas, the vast majority of potholes are farmed, either occasionally or every year, depending upon the duration of ponding. Many potholes have been either partially or totally drained to enhance agricultural production. The drastically fluctuating climate and alteration for farming have resulted in highly disturbed conditions that make wetland identification difficult. Aerial photographs, ASCS compliance slides, and other offsite information that depict long-term conditions are often better indicators of wetland conditions than onsite indicators reflecting only a single point in time.

Plant communities in potholes are usually disturbed, either naturally or due to farming, and many do not exhibit vegetation typical of more stable wetlands. The process of annual drying (drawdown) in potholes enables the invasion of FAC, FACU, or UPL plant species during dry periods which may persist into the wet seasons. Stewart and Kantrud (1971) have recognized this condition in describing vegetation phases in their classification of wetlands for the Prairie Pothole Region. The phases are as follows:

For Noncropland Areas

Drawdown Bare Soil Phase

As surface water in the open water phase gradually recedes and disappears, expanses of bare mud flats, which often become dry, are exposed. Ordinarily, this phase is of short duration, but in intermittent-alkali zones and occasionally in the more saline deep marsh zones, it may persist for considerable periods.

Natural Drawdown Emergent Phase

Undisturbed areas with emergent drawdown vegetation are considered to be in this phase. This growth is composed mostly of annual plants, including many forbs, that germinate on the exposed mud or bare soil of the drawdown bare soil phase. After the drawdown emergents become established, surface water is occasionally restored by heavy summer rains. Characteristic plant species of this phase include: *Eleocharis acicularis* (terrestrial form), *Rumex maritimus, Kochia scoparia, Xanthium italicum,*

Chenopodium rubrum, and *Senecio congestus*.

For Cropland Areas

Cropland Drawdown Phase

Tilled pothole bottoms with drawdown vegetation characterize this phase. The plants include many coarse, introduced annual weeds and grasses that normally develop on exposed mud flats during the growing season. These species appear as overwinter emergents whenever surface water is restored by summer rains. Characteristic plant species include: *Agropyron repens, Echinochloa crusgalli, Polygonum lapathifolium, Veronica peregrina, Hordeum jubatum, Plagiobothrys scopulorum, Xanthium italicum, Bidens frondosa, Seteria glauca, Polygonum convolvulus, Agropyron smithii, Brassica kaber, Descruainia sophia, Androsace occidentalis, Ellisia nyctelea, Erigeron canadensis*, and *Iva xanthifolia*.

Cropland Tillage Phase

In this phase, tilled bottom soils are dominated by annual field weeds, characteristic of fallow or neglected low cropland. Tilled dry pothole bottoms devoid of vegetation are also considered to be in this phase. Planted small grain or row crops are often present.

Playas

Playas occur in many arid or semiarid regions of the world. Although occurring throughout much of the western United States, they are concentrated in the southern Great Plains as either ephemeral or permanent lakes or wetlands (Nelson et. al. 1983). The topography of most playa regions is flat to gently rolling and generally devoid of drainage. Runoff from the surrounding terrain is collected into playa basins, where water is evaporated rapidly. Playas range in size from several hundred acres to only a few acres, with the majority being less than 10 acres.

Surface soils of playas are generally clays that form a highly impermeable seal and increase their water-holding capacity. The playa soils are typically Vertisols. In the southern Great Plains, playa soils are listed as Randall, Lipan, or Ness clays, Stegall silty clay loams, Lofton clay loams, or may be uncharacterized occurring as inclusions within nonhydric soil map units. Soils of playas are generally distinguishable from surrounding upland soils because of their contrasting darker color (Reed 1930).

The hydrology of playas involves rapid accumulation of natural runoff during late spring, with a gradual loss by evaporation and seepage through the summer except where basins have been excavated to concentrate water. The hydrology is influenced by agricultural practices, including basin modification for water collection and retention and grazing in the watershed. Water reaching the playa is derived primarily from precipitation and runoff within the basin watershed.

Playa basins are dry most of the time. The basins collect water primarily in two peak periods—May and September—as a result of regional convectional storms common throughout the region. Water collection in the basins is generally representative of seasonal or long-term extremes and not average annual conditions. As a result, wetland hydrology is best characterized by examining hydrological indicators over a multi-year period rather than relying on hydrological conditions that may be present at any point in time.

The hydrology of most playa wetlands seldom allows a stable flora to develop. Playa basins may have a dense cover of annual or perennial vegetation or may be barren, depending on the timing, intensity and amount of precipitation and irrigation runoff, the extent of grazing, and the size of the playas. As with potholes, the process of annual drying (drawdown) in playas enables the invasion of FAC, FACU, and UPL plants during dry periods which may persist into other seasons. Playa basins may show vegetative zonation in concentric bands from the basin center to the perimeter in response to decreasing water depths or soil moisture levels. However, such zonation is not typical of all playa basins; small playas that collect limited runoff may support prairie vegetation (primarily FACU and UPL species) or may be cultivated. Cultivated basins often contain either the living plants or remnants of smartweeds (*Polygonum* spp.), ragweeds (*Ambrosia* spp.), or other invading annuals. Some playa basins are large enough to have an open expanse of deep water that may support aquatic plant communities.

Vernal Pools

Vernal pools are depressional areas covered by shallow water for variable periods from winter to spring, but may be completely dry for most of the summer and fall. Small pools may drain completely several times during the rainy season and some pools may not retain any water during drought years.

An understanding of the natural history of the plants that occur in the transitional areas from pool to typically terrestrial habitat is useful in delineating these wetlands. Zedler (1987) provides an excellent overview of vernal pools which is briefly summarized below.

Vernal pools are wide-ranging in size (from 10 feet wide to 10 acres) but are always shallow (less than 6 inches to 2 feet deep). Depth and duration of saturation and inundation are more important in defining a vernal pool than size. Soils with confining layers, either nearly impermeable clay layers or iron-silica cemented hardpans, often have a seasonally perched water table which favors the development of vernal pool. Microrelief on the soils typically is hummocky, with pits (depressions) and mounds. Individual vernal pools are often interconnected by a series of swales and tributaries. Winter rainfall perches on the confining layer, until removed by evapotranspiration in the spring. A cemented hardpan or nearly impermeable clay subsoil layer, the pit and mound microrelief, and presence of swales are strong indicators of vernal pools.

Vernal pools hold water long enough to allow some strictly aquatic organisms to grow and reproduce (complete their life cycles), but not long enough to permit the development of a typical pond or marsh ecosystem. Changes in a vernal pool during the season are so dramatic that it is in some ways more appropriate to consider it to be sequence of ecosystem (a cyclical wetland) rather than a single static type. Vernal pool development can be broken into four phases: (1) Wetting phase, (2) aquatic phase, (3) drying phase, and (4) drought phase. The first rains stimulate the germination of dormant seeds and the growth of perennial plants (wetting phase). When the cumulative rainfall is sufficient to saturate the soils, aquatic plants and animals proliferate (aquatic phase). Nonaquatic plants are subjected to stress at this time. As the pool levels begin to recede (drying phase), the high soil moisture insures that plant growth continues after standing water is gone. Eventually, the plants succumb to drought and turn brown, with drying cracks appearing in the soil (drought phase).

Plant species characteristic of vernal pools are endemic to vernal pools, or occur in vernal pools but are common in other aquatic habitats or associated with vernal pools (see Tables 6A–D in Zedler, 1987). Non-pool species can tolerate the limited periods of standing water that exist toward the pool margins.

Since vernal pools typically vary considerably in depth and duration or both from year to year, within a year, or between different pools, plant composition is quite dynamic. FAC,

FACU and UPL species often invade the pool basins in dry years, as they do in other seasonally variable wetlands. Lack of hydrophytic plant species also may be indicative of recent disturbances such as off-road vehicle activities, farming, or grazing. In delineating these wetlands, it is important to be aware not only of the "pool" but of the vernal pool *complex* (pool, basin, swales, tributaries), parts of which may have shorter and more variable periods of inundation.

Appendix 6. Problem Area Wetlands

Certain situations encountered in the field can make wetland identification and delineation problematic. These situations are discussed below.

Newly Created Wetlands

These wetlands include manmade (artificial) wetlands, beaver-created wetlands, and other wetlands that have recently formed due to natural processes. Artificial wetlands may be purposely or accidentally created (e.g., road impoundments, undersized culverts, irrigation, and seepage from earth-dammed impoundments) by human activities. Many of these areas will have evidence of wetland hydrology and hydrophytic vegetation. The area should lack typical morphological properties of hydric soils, since the soils have just recently been inundated and/or saturated. Since all of these wetlands are newly established, evidence of one or more of the wetland identification criteria may not be present. One must always consider the relative permanency of the wetter conditions. For example, if a beaver has recently blocked a road culvert that has now caused flooding of nonwetland (e.g., upland forest or field), it is quite possible that the blockage will soon be removed. In this case, the action is considered nonpermanent and the area is not considered wetland. If, however, hydrophytic vegetation has colonized the area, the hydrology is considered more or less permanently altered and the area is considered wetland. Temporary roads may impede the natural flow of water and impound water for some time. Yet, since the road is only temporary, the effect is also temporary, so the area is not considered wetland, unless, of course, it was wetland prior to the road construction.

Wetlands on Glacial Till or in Rocky Areas

Sloping wetlands occur in glaciated areas where soils cover relatively impermeable glacial till or where layers of glacial till have different hydraulic conditions that permit groundwater seepage. Such areas are seldom, if ever, flooded, but downslope groundwater movement keeps the soils saturated for a sufficient portion of the growing season to produce anaerobic and reducing soil conditions. This promotes the development of hydric soils and hydrophytic vegetation. Evidence of wetland hydrology may be lacking during the drier portion of the growing season. Hydric soil properties also may be difficult to observe because certain areas are so rocky that it is difficult to examine soil characteristics within 18 inches.

Wetland-Nonwetland Mosaics

In numerous areas, including northern glaciated regions and the coastal plain, the local topography may be pockmarked with a complex of "pits" (depressions) and "mounds" (knolls). The pits may be wet enough to be classified as wetland, whereas the mounds are usually nonwetland. (Note: In some areas, the shallow mounds are also wetland. When this is true, the entire area is wetland.) The interspersion of wet pits and dry mounds may make the delineation of the wetland boundary difficult when the pits are too small to separate from the mounds. Of course, any area should be mapped within practical limits. When it is not practicable to separate the wet pits from the dry mounds, it is recommended that the wetland-nonwetland boundary be delineated by assessing the percent of the area covered by the wetland pits in an area of similar pit-mound relief. At least two random transects should be established to determine the percent of pits vs. mounds. Based on the assessment at two-foot intervals along each transect, the percent of wetland vs. upland points can be established for the area. Consult the appropriate regulatory agency to learn what ratio they want to consider "wetland" for regulatory purposes. One should also note in his or her field report that this protocol was used and give an estimated size range for the wetland pits (e.g., 3–5' diameter) as well as a brief narrative description of the site.

Cyclical wetlands

While the hydrology of all wetlands varies annually, the hydrology of certain wetlands, may naturally fluctuate in a cyclical patterns of a series of consecutive wet years followed by a series of dry years. During the wet periods, hydrophytic vegetation and wetland hydrology are present, yet during the dry periods, the hydrology does not appear to meet the wetland hydrology criterion and FACU and UPL plant species often become established and may predominate under these temporal drier conditions. Despite the lack of periodic flooding or saturated soils for a multi-year period, these are as should still be considered wetland, since in the long run, wetland characteristics prevail. Specific examples of cyclic wetlands include Alaska's black spruce-permafrost wetlands, groundwater wetlands of the Cimmaron Terrace of Oklahoma and Kansas, and wetlands in coastal and West Texas. Other cyclical wetlands are associated with drought-prone areas such as southern California and the arid and semi-arid regions of the country.

Vegetated Flats.

Vegetated flats typically are characterized by a marked seasonal periodicity in plant growth. They occur both in coastal and interior parts of the country (e.g., regularly flooded freshwater tidal marshes and exposed shores of lakes or reservoirs during drawdowns due to natural fluctuations or human actions). They are dominated by annual OBL species, such as wild rice (*Zizania aquatica*), and/or perennial OBL species, such as spatterdock (*Nuphar luteum*), that have nonpersistent vegetative parts (i.e., leaves and stems breakdown rapidly during the winter, providing no evidence of the plant on the wetland surface at the beginning of the next growing season). During winter and early spring, these areas lack vegetative cover and resemble mud flats; therefore, they do not appear to qualify as wetlands. But during the growing season the vegetation becomes increasingly evident, qualifying the area as vegetated wetland. In evaluating these areas, one must consider the time of year of the field observation and the seasonality of the vegetation. Again, one must become familiar with the ecology of these wetland types.

Interdunal Swale Wetlands

Along the U.S. coastline, seasonally wet swales supporting hydrophytic vegetation are located within sand dune complexes on barrier islands and beaches. Some of these swales are inundated or saturated to the surface for considerable periods during the growing season, while others are wet for only the early part of the season. In some cases, swales may be flooded irregularly by the tides. These wetlands have sandy soils that generally lack evidence of hydric soil properties. In addition, evidence of wetland hydrology may be absent during the drier part of the growing season. Consequently, these wetlands may be harder to identify.

Springs and Seepage Wetlands

Wetlands occurring in flowing waters from springs and groundwater seepage areas may not exhibit typical hydric soil properties due to oxygen-enriched waters. Springs have permanently flowing waters, while seepage flows may be seasonal. Not all seepage areas, however, are considered wetlands. To qualify as wetland, the following conditions should be met: (1) Seepage flow by oxygen-enriched waters is continuous for at least a 30-day period during the growing season in most years and saturate the soil to the surface, and (2) OBL and/or FACW species predominate or have a prevalence index less than or equal to 2.5. Soils wet for this duration are typically considered to have an aquic moisture regime and are hydric. The outer boundary of these wetlands is established by the limits of predominance of OBL and/or FACW species.

Drought-affected Wetlands

Droughts periodically occur in many parts of the country, especially in the semiarid and arid West. During drought, it is quite obvious that water will not be observed in many wetlands, especially those higher up on the soil moisture gradient. With the drying of these wetlands over a number of consecutive years, environmental conditions no longer favor the growth of hydrophytic vegetation, so FACU and UPL species become established and often predominate in time. Thus, the plant community composition changes to one that is no longer dominated by hydrophytes. Such communities fail to meet the hydrophytic vegetation criterion, unless treated as harder to identify wetlands. Drought-affected wetlands should be identified by the presence of hydric soils, further refined by clear signs of long-term hydrology as expressed in the soil by: Thick organic surface layers, gleyed layers, low chroma matrices with high chroma mottles, and others listed as regional wetland hydrology indicators. Additional verification of hydrology may be advisable for some sites and an examination of aerial photographs during the wet part of the growing season in years of normal precipitation (distributions and amount) should reveal signs of wetland hydrology. In addition, landscape position (e.g., depressions and sloughs) may provide additional evidence for recognizing these wetlands during droughts.

Appendix 7. Disturbed Area Procedures

Step 1. Determine whether vegetation, soils, and/or hydrology have been significantly altered at the site. Proceed to Step 2.

Step 2. Determine whether the "altered" characteristic met the wetland criterion in question prior to site alteration. Field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Review existing information for the area (e.g., aerial photos, NWI maps, soil surveys, hydrologic data, and previous site inspection reports), contact knowledgeable persons familiar with the area, and conduct an onsite inspection to build supportive evidence. The strongest evidence involves considering all of the above plus evaluating a nearby reference site (an area similar to the one altered before modification) for field indicators of the three technical criteria for wetland. If a human activity or natural event altered the vegetation, proceed to Step 3; the soils, proceed to Step 4; the hydrology, proceed to Step 5.

Step 3. Determine whether the hydrophytic vegetation criterion was met prior to disturbance:

(1) Describe the type of alteration. Examine the area and describe the type of alteration that occurred. Look for evidence of selective harvesting, clearcutting, buildozing, recent conversion to agriculture, or other activities (e.g., burning, discing, the presence of buildings, dams, levees, roads, and parking lots).

(2) Determine the approximate date when the alteration occurred if necessary. Check aerial photographs, examine building permits, consult with local individuals, and review other possible sources of information.

(3) Describe the effects on the vegetation. Generally describe how the recent activities and events have affected the plant communities. Consider the following:

(A) Has all or a portion of the area been cleared of vegetation?

(B) Has only one layer of the plant community (e.g., trees) been removed?

(C) Has selective harvesting resulted in the removal of some species?

(D) Has the vegetation been burned, mowed, or heavily grazed?

(E) Has the vegetation been covered by fill, dredged material, or structures?

(F) Have increased water levels resulted in the death of all or some of the vegetation?

(4) Determine whether the area had plant communities that met the hydrophytic vegetation criterion. Develop a list of species that previously occurred at the site from existing information, if possible, and determine whether the hydrologic vegetation criterion was met. If site-specific data do not exist, then do the following, as appropriate:

(A) If the vegetation is removed and supportive evidence affirmatively demonstrates that the hydrophytic vegetation criterion would have been met but for the alteration and no other alterations have been done, then evidence of the elimination of the hydrophytic vegetation together with the presence of hydric soils and evidence of wetland hydrology will be used to identify wetlands. It may be advantageous to examine a nearby reference site to collect data on the plant community to confirm this assumption. (Note: Determination of regulatory jurisdiction for such areas is subject to agency interpretation. For example, Federal wetland regulatory policy under the Clean Water Act, and agricultural program policy under the Food Security Act of 1985, as amended, interprets the relative permanence of disturbance to vegetation caused by cropping. Be sure to consult appropriate agency policy in making Federal wetland jurisdictional determinations in such areas.)

(B) If the area is filled, burying the vegetation, and no other alterations (i.e., to hydrology or soils) have taken place, then either: (1) Look below the fill layer for hydric soil and indicators of wetland hydrology, plus any signs of hydrophytic vegetation (if not decomposed), or (2) if type of fill (e.g., concrete) precludes examination of soil beneath the fill, then review existing information (e.g., soil survey, wetland maps, and aerial photos) to determine if the area was wetland. If necessary, evaluate a neighboring undisturbed area (reference site) with characteristics (i.e., vegetation, soils, hydrology, and topography) similar to the area in question prior to its alteration. Be sure to record the location and major characteristics (vegetation, soils, hydrology, and topography) of the reference site. Sample the vegetation in this reference area using an appropriate onsite determination method to determine whether hydrophytic vegetation is present. If the hydrophytic vegetation criterion is met at the reference site, then this criterion is presumed to have been met in the altered area. If no indicators of hydrophytic vegetation are found at the reference site, then the original vegetation at the project area is not considered to have met the hydrophytic vegetation criterion.

(C) If soils and/or hydrology also have been disturbed, then continue Steps 4, 5, and 6 below, as necessary.

Otherwise, return to the applicable step of the onsite determination method being used.

Step 4. Determine whether or not hydric soils previously occurred:

(1) Describe the type of alteration. Examine the area and describe the type of alteration that occurred. Look for evidence of:

(A) Deposition of dredged or fill material—In many cases the presence of fill material will be obvious. If so, it will be necessary to dig a hole to reach the original soil (sometimes several feet deep). Fill material will usually be a different color or texture than the original soil (except when fill material has been obtained from similar areas onsite). Look for decomposing vegetation between soil layers and the presence of buried organic or hydric mineral soil layers. In rare cases, excessive deposition of sediments may be due to catastrophic conditions, e.g., mud slides and volcanic eruptions. Floodplain environments are subjected to periodic sedimentation, but this is a more normal occurrence and does not constitute a significant disturbance for purposes of this manual.

(B) Presence of nonwoody debris at the surface—This can only be applied in areas where the original soils do not contain rocks. Nonwoody debris includes items such as rocks, bricks, and concrete fragments.

(C) Subsurface plowing—Has the area recently been plowed below the A-horizon or to depths of greater than 10 inches?

(D) Removal of surface layers—Has the surface soil layer been removed by scraping or natural landslides? Look for bare soil surfaces with exposed plant roots or scrape scars on the surface.

(E) Presence of manmade structures—Are buildings, dams, levees, roads, or parking lots present?

(2) Determine the approximate date when the alteration occurred, if necessary. Check aerial photographs, examine building permits, consult with local individuals, and review other possible sources of information.

(3) Describe the effects on soils. Consider the following:

(A) Has the soil been buried? If so, record the depth of fill material and determine whether the original soil was left intact or disturbed.

Note: The presence of a typical sequence of soil horizons or layers in the buried soil is an indication that the soil is still intact; check description in the soil survey report.

(B) Has the soil been mixed at a depth below the A-horizon or greater than 12 inches? If so, it will be necessary to examine the soil at a depth immediately below the plow layer or disturbed zone.

(C) Has the soil been sufficiently altered to change the soil phase? Describe these changes. If a hydric soil has been drained to some extent, refer to Step 5 below to determine whether soil is effectively drained or is still hydric.

(4) Characterize the soils that previously existed at the disturbed site. Obtain all possible evidence that may be used to characterize soils that previously occurred on the area. Consider the following potential sources of information.

(A) Soil surveys—In many cases, recent soil surveys are available. If so, determine the soils that were mapped for the area. If all soils are hydric soils, it is presumed that the entire area had hydric soils prior to alteration. Consult aerial photos to refine hydric boundaries, especially for soil map units with hydric soil inclusions.

(B) Buried soils—When fill material has been placed over the original soil without physically disturbing the soil, examine and characterize the buried soils. Dig a hole through the fill material until the original soil is encountered. Determine the point at which the original soil material begins. Remove 18 inches of the original soil from the hole and follow standard procedures for determining whether the hydric soil criterion is met. (Note: When the fill material is a thick layer, it might be necessary to use a backhoe or posthole digger to excavate the soil pit.) If USGS topographic maps indicate distinct variation in the area's topography, this procedure must be applied in each portion of the area that originally had a different surface elevation.

(C) Deeply plowed soils or removed surface layers—If soil surface layers are removed, redistributed or deeply plowed (excluding normal plowing), vegetation will not be present, so review existing information (e.g., soil surveys, wetland maps, and aerial photos), identify a nearby reference site that is similar to disturbed area prior to its alteration, evaluate for indicators of hydropytic vegetation, hydric soils, and wetland hydrology and make wetland or nonwetland determination, as appropriate.

(5) Determine whether hydric soils were present at the project area prior to alteration. Examine the available data and determine whether evidence of hydric soils were formerly present. If no evidence of hydric soils is found, the original soils are considered nonhydric soils. If evidence of hydric soils is found, the hydric soil criterion has been met. Continue to Step 5 if hydrology also was altered. Otherwise, record decision and return to the applicable step of the onsite determination method being used.

Step 5. Determine whether wetland hydrology existed prior to alteration and whether wetland hydrology still exists (i.e., is the area effectively drained?). To determine whether wetland hydrology still occurs, proceed to Step 6. To determine whether wetland hydrology existed prior to the alteration:

(1) Describe the type of alteration. Examine the area and describe the type of alteration that occurred. Look for evidence of:

(A) Dams—Has recent construction of a dam or some natural event (e.g., beaver activity or landslide) caused the area to become increasingly wetter or drier?

Note: This activity could have occurred at a considerable distance from the site in question, so be aware of and consider the impacts of major dams in the watershed above the project area.

(B) Levees, dikes, and similar structures—Have levees or dikes been recently constructed that prevent the area from periodic overbank flooding?

(C) Ditches or drain tiles—Have ditches or drain tiles been recently constructed causing the area to drain more rapidly?

(D) Channelization—Have feeder streams recently been channelized sufficiently to alter the frequency and/or duration of inundation?

(E) Filling of channels and/or depressions (land-leveling)—Have natural channels or depressions been recently filled?

(F) Diversion of water—Has an upstream drainage pattern been altered that results in water being diverted from the area?

(G) Groundwater withdrawal—Has prolonged and intensive pumping of groundwater for irrigation or other purposes significantly lowered the water table and/or altered drainage patterns?

(2) Determine the approximate date when the alteration occurred, if necessary. Check aerial photographs, consult with local individuals, and review other possible sources of information.

(3) Describe the effects of the alteration on the area's hydrology. Consider the following and generally describe how the observed alteration affected the project area:

(A) Is the area more frequently or less frequently inundated than prior to alteration? To what degree and why?

(B) Is the duration of inundation and soil saturation different than prior to

alteration? How much different and why?

(4) Characterize the hydrology that previously existed at the area. Obtain and record all possible evidence that may be useful for characterizing the previous hydrology. Consider the following:

(A) Stream or tidal gauge data—If a stream or tidal gauging station is located near the area, it may be possible to calculate elevations representing the upper limit of wetland hydrology based on duration of inundation. Consult SCS district offices, hydrologists from the local CE district offices or other agencies for assistance. If fill material has not been placed on the area, survey this elevation from the nearest USGS benchmark. If fill material has been placed on the area, compare the calculated elevation with elevations shown on a USGS topographic map or any other survey map that predates site alteration.

(B) Field hydrologic indicators onsite or in a neighboring reference area—Certain field indicators of wetland hydrology may still be present. Look for water marks on trees or other structures, drift lines, and debris deposits (for additional hydrology indicators, see other signs of wetland hydrology section). If adjacent undisturbed areas are in the same topographic position, have the same soils (check soil survey map), and are similarly influenced by the same sources of inundation, look for wetland hydrology indicators in these areas.

(C) Aerial photographs—Examine aerial photographs and determine whether the area has been inundated or saturated during the growing season. Consider the time of the year that the aerial photographs were taken and use only photographs taken prior to site alteration.

(D) Historical records—Examine historical records for evidence that the area has been periodically inundated. Obtain copies of any such information.

(E) National Flood Insurance Agency flood maps—Determine the previous frequency of inundation of the area from national floods maps (if available).

(F) Local government officials or other knowledgeable individuals—Contact individuals who might have knowledge that the area was periodically inundated or saturated.

(5) Determine whether wetland hydrology previously occurred. Examine available data. If hydrology was significantly altered recently (e.g., since Clean Water Act), was wetland hydrology present prior to the alteration? If the vegetation and soils have not been disturbed, use site characteristics—vegetation, soils, and field evidence of wetland hydrology—to identify wetland. If vegetation and soil are removed, then review existing information (e.g., soil surveys, wetland maps, and aerial photos), following procedures in Step 6, substep 3. If no evidence of wetland hydrology is found, the original hydrology of the area is not considered to meet the wetland hydrology criterion. If evidence of wetland hydrology is found, the area used to meet the wetland hydrology criterion. Record decision and return to the applicable step of the onsite determination method being used.

Step 6. Determine whether wetland hydrology still exists. Many wetlands have a single ditch running through them, while others may have an extensive network of ditches. A single ditch through a wetland may not be sufficient to effectively drain it; in other words, the wetland hydrology criterion still may be met under these circumstances. Undoubtedly, when ditches or drain tiles are observed, questions as to the extent of drainage arise, especially if the ditches or drain tiles are part of a more elaborate stream channelization or other drainage project. In these cases and other situations where the hydrology of an area has been significantly altered (e.g., dams, levees, groundwater withdrawals, and water diversions), one must determine whether wetland hydrology still exists. If it is present, the area is not effectively drained. If wetland hydrology is not present, the area is still a wetland. To determine whether wetland hydrology still exists:

(1) Describe the type or nature of the alteration. Look for evidence of:

(A) Dams;

(B) Levees, dikes, and similar structures;

(C) Ditches;

(D) Channelization;

(E) Filling of channels and/or depressions;

(F) Diversion of water; and

(G) Groundwater withdrawal.

(See Step 5 above for discussion of these factors.)

(2) Determine the approximate date when the alteration occurred, if necessary. Check aerial photographs, consult with local officials, and review other possible sources of information.

(3) Characterize the hydrology that presently exists at the area. When evaluating agricultural land to determine the presence or absence of wetland, it is recognized that such lands are generally disturbed and must be viewed in that context. Wetland hydrology is often altered on agricultural lands, so the mere presence of soils meeting the hydric soil criterion is not sufficient to determine that wetlands are present. Due to the common hydrologic and vegetative modifications on agricultural lands, indicators of wetland hydrology, together with soil-related properties, are the most reliable means of wetland identification. The following procedures is designed to provide technical guidance for determining whether an area subject to some degree of hydrologic modification still meets the wetland hydrology criterion. In general, the hydrology of most such areas can be evaluated by reviewing existing site-specific information, examining aerial photographs, or conducting onsite inspections to look for evidence of wetland hydrology (substeps A–F). More rigorous assessment (substep G) may be done less commonly where despite the lack of wetland hydrology evidence one has a strong suspicion that wetland hydrology still exists. The reason for doing this more detailed assessment should be documented. Caution: when the hydrology of an area has been significantly altered, soil characteristics resulting from wetland hydrology cannot be used to verify wetland hydrology since they persist after wetland hydrology has been eliminated.)

(A) Review existing site-specific hydrologic information to see if data support the wetland hydrology criterion. If such data are unavailable or inconclusive, proceed to Step 2.

(B) Examine aerial photographs (preferably early spring or wet growing season) for several recent years (e.g., a minimum of 5 years is recommended), look for signs of inundation or prolonged soil saturation, and consider these observations in the context of long-term hydrology. (Note: Large-scale aerial photographs, 1:24,000 and larger, are preferred.) Be sure to know the prevailing environmental conditions for all dates of photography. Try to avoid abnormally wet or dry dates for they may lead to erroneous conclusions about wetland hydrology. You are attempting to assess conditions during normal rainfall years. If the area is wet more years than not during normal rainfall years (e.g., 3 of 5 years or 6 of 10 years), then the wetland hydrology criterion is presumed to be met. If the area shows no indication of wetness during normal rainfall years or shows such signs in only a few years (e.g., 1 of 5 years or 3 of 10 years), then the wetland hydrology criterion is presumed not to be met. If conditions are between the two mentioned above (e.g., 2 of 5 years or 4–5 of 10 years), proceed to substep C.

Note: Only those areas showing signs of wetness should be considered to meet the wetland hydrology criterion.

(C) Examine additional aerial photos, National Wetland Inventory maps, or other information for indication of wetland or signs of wetland hydrology. If other information, coupled with the previous information is substep B, indicates that the area is wet more often than not (e.g., 3 of 5 years or 6 of 10 years), or indicates that the area is wet half of the time (e.g., 3 of 6 years or 5 of 10 years), then the wetland hydrology criterion is presumed to be met. If other information, coupled with the previous information in substep 2, provides indication that the area is wet less often than not (e.g., 2 of 5 years or 4 of 10 years), then the wetland hydrology criterion is presumed not to be met. If it is perceived after reviewing additional information that wetland hydrology is still inconclusive, proceed to substep D.

(D) Inspect the site for direct evidence of inundation or prolonged soil saturation or other field evidence of wetland hydrology (excluding soil properties resulting from long-term hydrology) to determine whether the wetland hydrology criterion is met. Ideally, such inspection should be done during the early or wet part of the growing season during a normal rainfall year. Avoid periods after heavy rainfall or immediately after more normal rainfalls. After conducting the onsite inspection, if necessary, proceed to substep E in areas where vegetation has not been removed or cultivated or to substep G in cultivated areas to perform a more rigorous assessment of vegetation and/or hydrology and document your reason for doing so.

(E) Inspect the site on the ground to assess changes in the plant community. If OBL or OBL and FACW plant species (especially in the herb stratum) are dominant or scattered throughout the site and UPL species are absent or not dominant, the area is considered to meet the wetland hydrology criterion and remains wetland. If UPL species predominate one or more strata (i.e., they represent more than 50 percent of the dominants in a given stratum) and no OBL species are present, then the area is considered effectively drained and is no longer wetland.

Note: Make sure that the UPL species are materially present and dominate a valid stratum.

If the vegetation differs from the above situations, then the vegetation at this site should be compared if possible with a nearby undisturbed reference area, so proceed to substep F; if it is not possible to evaluate a reference site and the area is ditched, channelized or tile-drained, go to substep G.

(F) Locate a nearly undisturbed reference site with vegetation, soils, hydrology, and topography similar to the subject area prior to its alteration, examine the vegetation (following an appropriate onsite delineation method), and compare it with the vegetation at the project site. If the vegetation is similar (i.e., has the same dominants or the subject area has different dominants with the same indicator status or wetter as the reference site), then the area is considered to be wetland—the wetland hydrology criterion is presumed to be satisfied. If the vegetation has changed to where FACU and UPL species or UPL species alone predominate and OBL species are absent, then the area is considered effectively drained and is nonwetland. If the vegetation is different than indicated above, additional work is required—go to substep G.

(G) Select one of the following approaches to further assess the area's hydrology:

(1) Determine the "zone of influence" of the drainage structure and its effect on the water table using existing SCS soil drainage guides, the ellipse equation, or similar drainage model (SCS soil drainage guides and the ellipse equation relate only to water table and do not address surface water), and determine the effect of the drainage structure on surface water (ponding and flooding). Factors to consider when analyzing the effect of the drainage structure on surface water are: (a) The type of drainage system (e.g., size, spacing, depth, grade, and outlet conditions); (b) surface inlets; (c) condition of the drainage system; (d) how surface water is removed; and (e) soil type as it related to runoff.

(2) Conduct detailed ground water studies, making direct observations of inundation and soils saturation throughout the area in question. Data should be collected in the following manner:

(a) *Depth of Wells.* Well should be placed within 24 inches of the soil surface or to the top of the restrictive horizon, if shallower.

(b) *Annual Observation Period.* Observations should be made during the expected high water table period including both the nongrowing and growing seasons; the recommended period of observation will vary regionally. At a minimum the period should encompass a three month period during the wettest part of the growing season and include the month before the start of the growing season if the wettest part is in the Spring.

(c) *Frequency of Observation.* During the observation periods, the wells should be observed a minimum of two times per week at a regular interval not to exceed four days between observations; for soils with anticipated rapid fluctuations of the water table (e.g., sandy soils), a one or two day observation interval is recommended.

(d) *Length of Study.* A minimum of three annual observation periods, each having at least 90% of average yearly precipitation and at least 90% of normal monthly distribution. Also, the year prior to the water table study must have had 90% of the monthly and annual precipitation. The observation study may cease after the minimum consecutive time period required for meeting the wetland hydrology criterion.

Note: Data from any year that does not have 90% of average precipitation cannot be counted toward the three-year study duration unless it can be adequately justified in a specific case.

Precipitation information should be locally derived (not necessarily site-specific) from the nearest NOAA-approved weather station or other available sources of technically valid information (e.g., university branch stations or research sites, media weather stations, USGS stations, state agency stations, etc.). These precipitation stations must be located within 25 miles of the monitored water table study. If this is not possible, consult appropriate regulatory agency for alternatives.

If the wetland hydrology criterion is met, return to the applicable step in the onsite determination method being used and continue delineating the wetland.

Appendix B. Procedures for Exceptions to the Three Criteria

Wetlands that are exceptions to the three criteria are to be identified using the procedures below.

1. What is the reason for the exception? (Identify vegetation or hydrology as the reason for the exception.)

If vegetation is the reason for the exception, go to 2a. If hydrology, go to 2b.

2a. Is the plant community growing on a soil that meets the hydric soil criterion?

If no, the area is non-wetland.

If yes, document the reasons for this conclusion and go to 3a.

3a. Are one or more of the following conditions satisfied?

• Hydrologic records or aerial photography combined with hydrologic records (items 1 and 2 of wetlands

hydrology criterion) document wetland hydrology; or

• One or more primary hydrologic indicators (item 3 of wetlands hydrology criterion) is documented to have been found at the site; or

• One or more secondary hydrologic indicators are materially present and supported by corroborative information as described in item 4 of wetlands hydrology criterion (e.g., regional indicators of saturation, hydrologic gauge data, NWI maps).

If no, the area is non-wetland.

If yes, the area is a wetland; document the reasons for this conclusion. The upper boundary of these wetlands is established by the limits of the combination of the wetland hydrology indicators present and hydric soil.

2b. Is the plant community growing on a soil that meets the hydric soil criterion?

If no, the area is non-wetland.

If yes, document the reasons for this conclusion and go to 3b.

3b. Does the area demonstrate a regional indicator of saturation?

If no, go to 5b.

If yes, go to 4b.

4b. Does the area support a plant community that meets the hydrophytic vegetation criterion?

If no, the area is non-wetland.

If yes, the area is a wetland. Document the reasons for this conclusion. The upper boundary of this wetland is established by the limits of the combination of hydrophytic vegetation, hydric soils, and the regional indicators of saturation present.

5b. Does the plant community have a mean prevalence index of less than 3.0?

If no, the area is non-wetland.

If yes, the area is wetland; document the reasons for this conclusion. The upper boundary of this wetland is established by the limits of the combination of the wetland vegetation as described in this step and hydric soils.

[FR Doc. 91-19418 Filed 8-13-91; 8:45 am]

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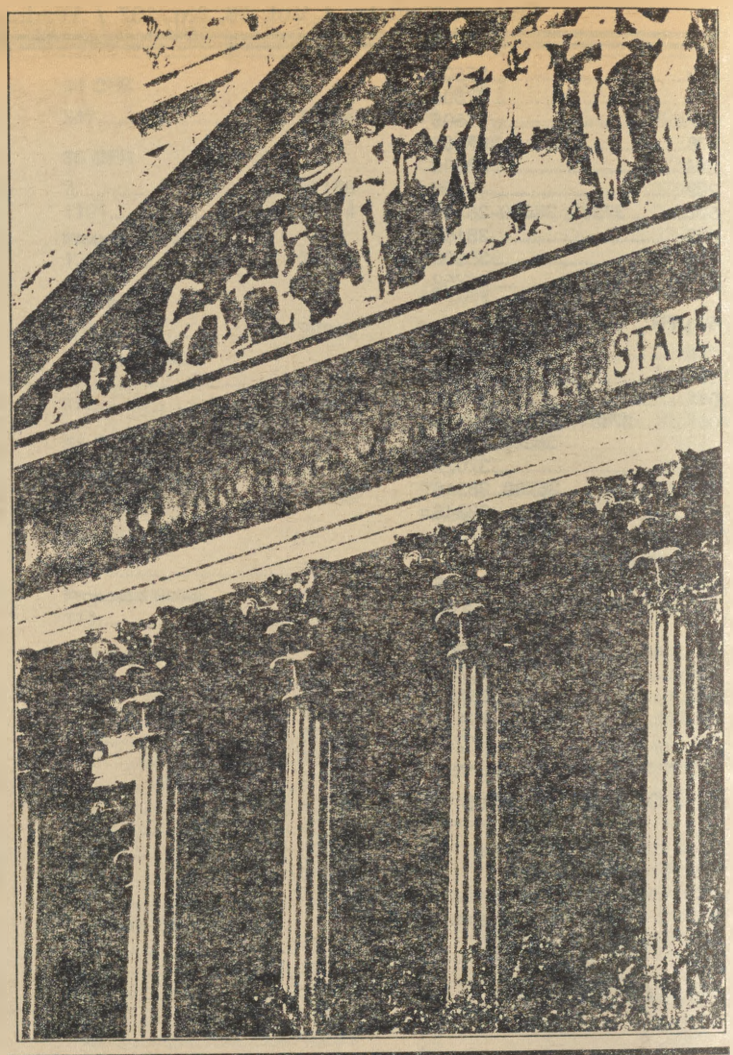
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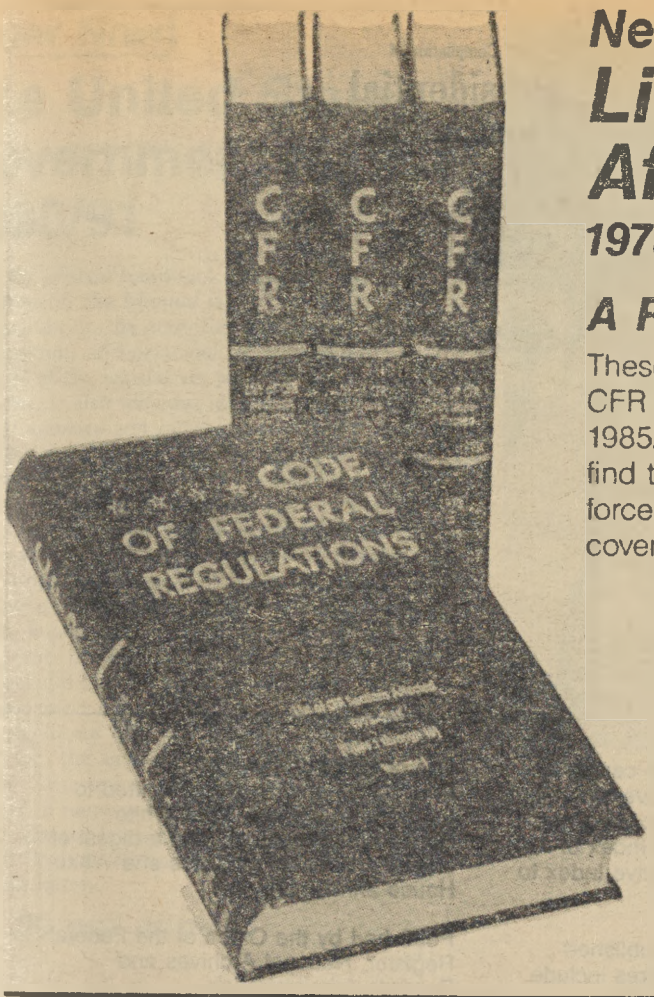
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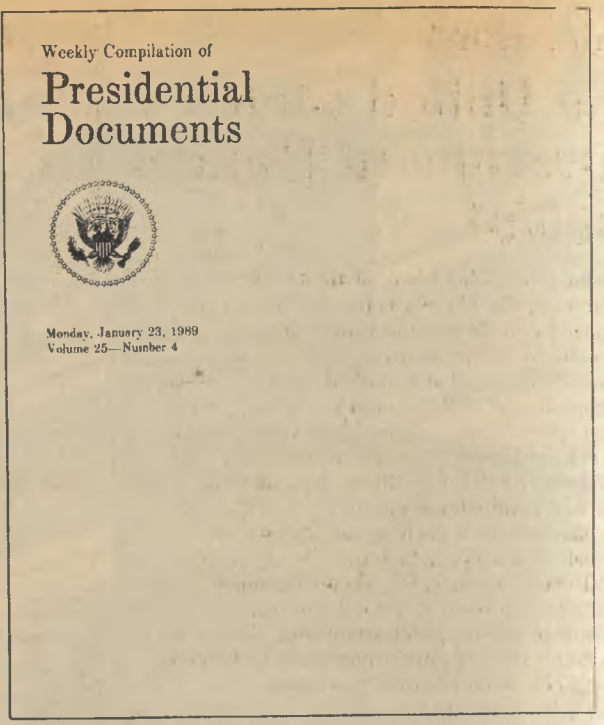
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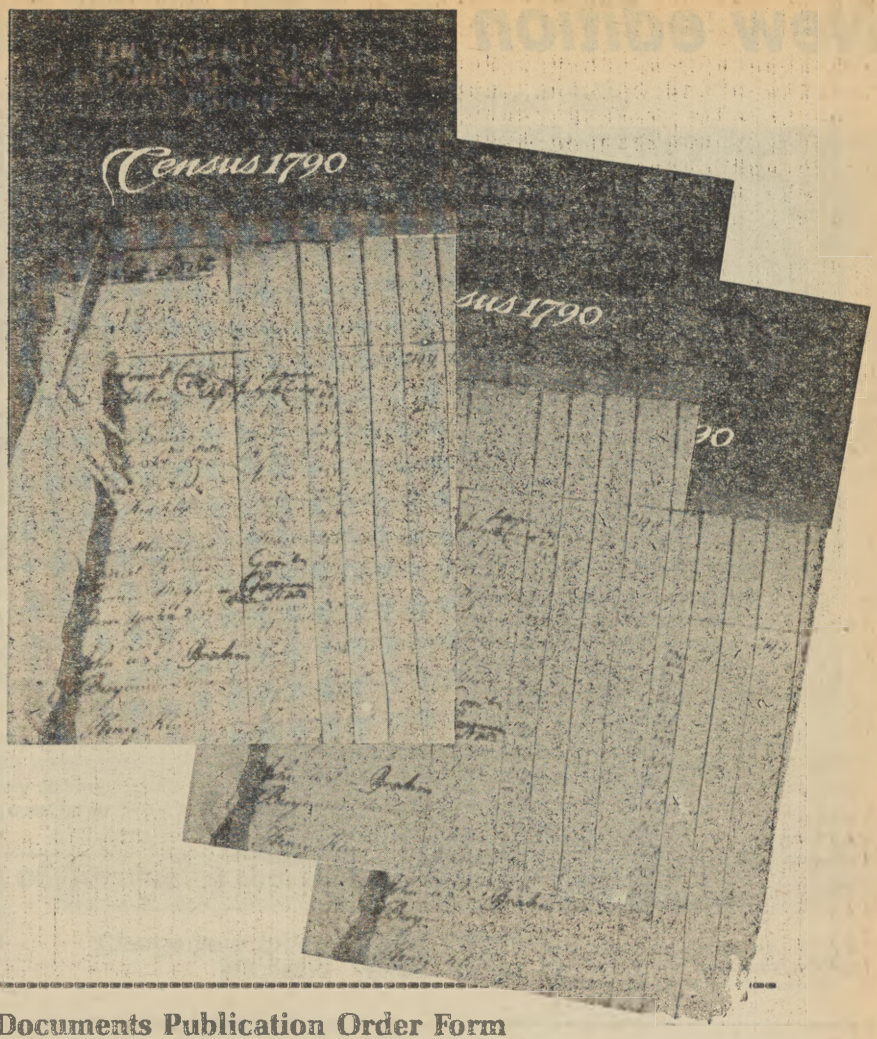
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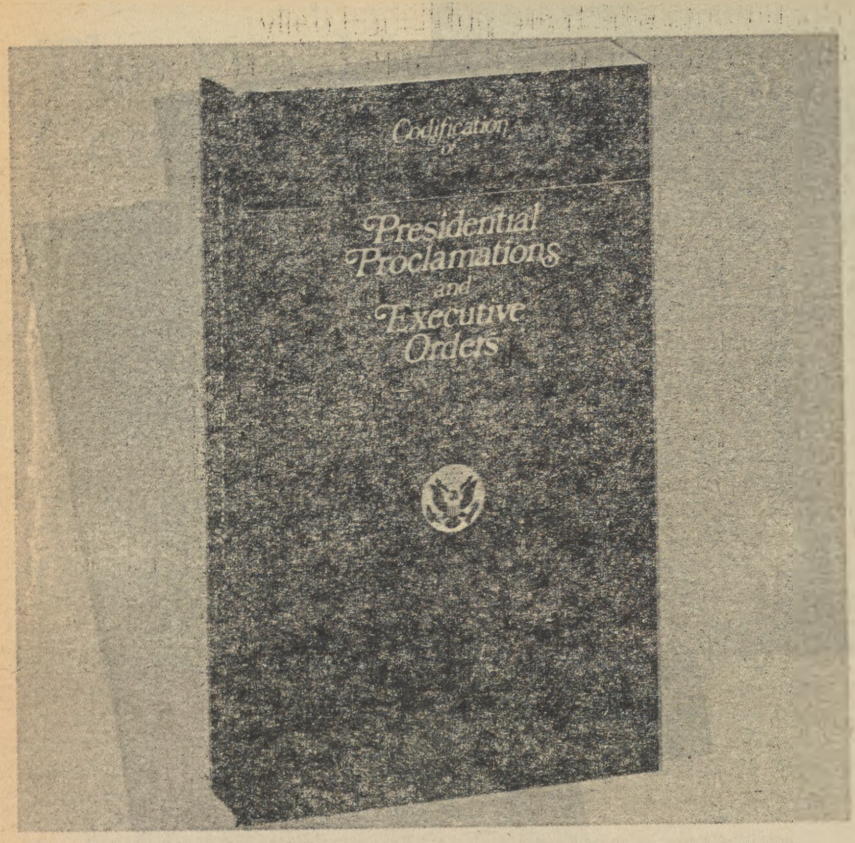
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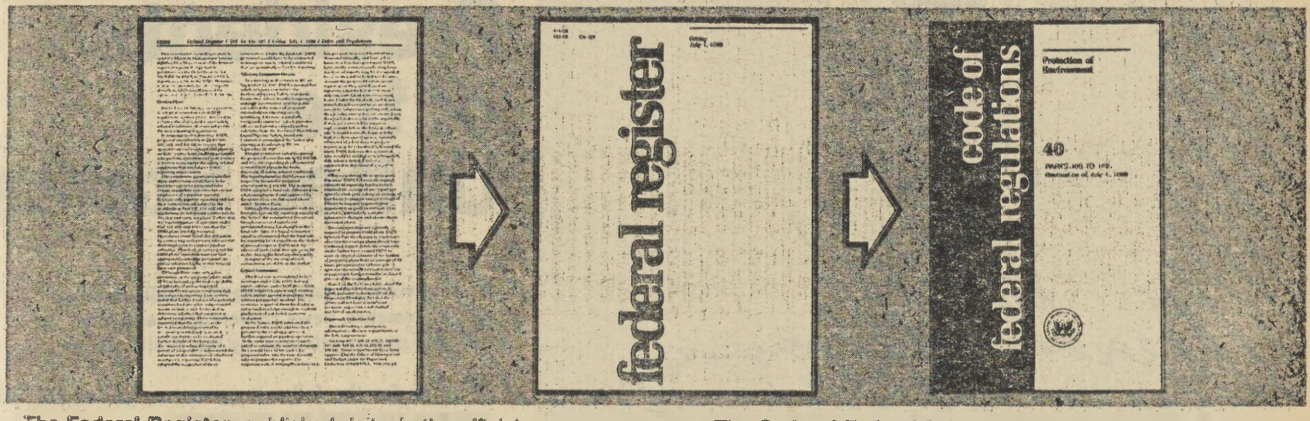
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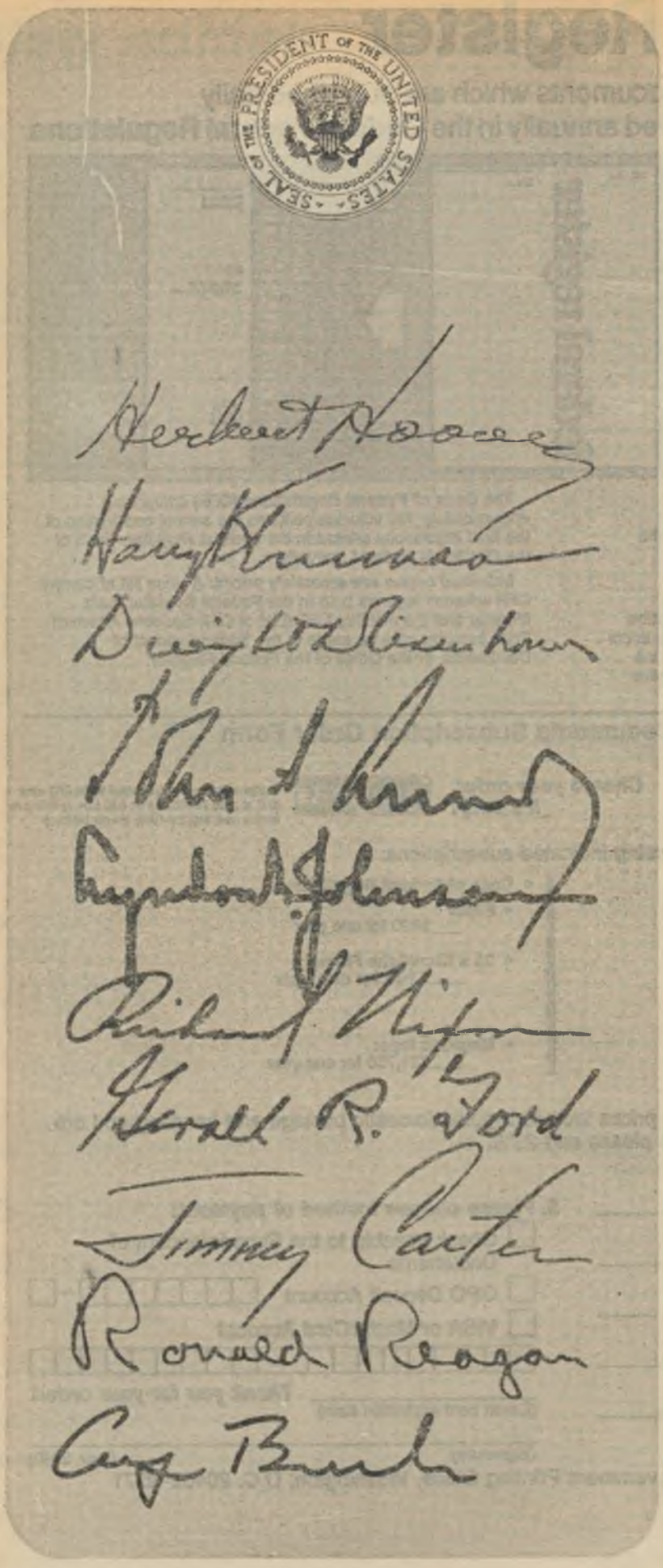
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